

Second Regular Session 114th General Assembly (2006)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2005 Regular Session of the General Assembly.

## HOUSE ENROLLED ACT No. 1279

AN ACT to amend the Indiana Code concerning utilities and transportation.

*Be it enacted by the General Assembly of the State of Indiana:*

SECTION 1. IC 4-23-7.1-40.5, AS ADDED BY P.L.136-2005, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 40.5. (a) For purposes of this section, "accessible electronic information service" means a service that provides to an eligible individual news and other timely information, including newspapers, from a multistate service center, using high speed computers and telecommunications technology for Internet acquisition of content and rapid distribution in a form appropriate for use by an eligible individual.

(b) For purposes of this section, "director" refers to the director of the Indiana talking books and braille division of the Indiana state library.

(c) For purposes of this section, "eligible individual" means an individual who is blind or disabled and qualifies for services under 36 CFR 701.10(b).

(d) For purposes of this section, "qualified entity" means an agency, instrumentality, or political subdivision of the state or a nonprofit organization that:

- (1) using computer technology, produces audio or braille editions of daily news reports, including newspapers, for the purpose of providing eligible individuals with access to news;
- (2) obtains electronic news text through direct transfer

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arrangements made with participating news organizations; and  
 (3) provides a means of program administration and reader registration on the Internet.

(e) The director may enter into an agreement with a qualified entity to provide an accessible electronic information service for eligible individuals. This service shall be planned for continuation from year to year and make maximum use of federal and other funds available by:

- (1) obtaining grants or in kind support from appropriate programs; and
- (2) securing access to low cost interstate rates for telecommunications by reimbursement or otherwise.

**(f) The accessible electronic information service fund is established for purposes of this section. The fund consists of appropriations from the general assembly, loan proceeds, and gifts and grants to the fund.**

**(g) The treasurer of state shall invest the money in the accessible electronic information service fund not currently needed to meet the obligations of the fund in the same manner as other public funds may be invested.**

**(h) The money in the accessible electronic information service fund at the end of a state fiscal year does not revert to the state general fund but remains in the fund to be used exclusively for purposes of this section.**

SECTION 2. IC 8-1-1.1-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 3. The governor shall appoint a consumer counselor, for a term of four (4) years at a salary to be fixed by the governor. The counselor shall serve at the will and pleasure of the governor. The counselor shall be a practicing attorney, and qualified by knowledge and experience to practice in utility regulatory agency proceedings. The counselor shall apply ~~his~~ **the counselor's** full efforts to the duties of the office and may not ~~be actively engaged~~ **engage** in any ~~other~~ occupation, practice, profession or business **that would conflict with the duties of the office.**

SECTION 3. IC 8-1-2-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1. (a) **Except as provided in section 1.1 of this chapter,** "public utility", as used in this chapter, means every corporation, company, partnership, limited liability company, individual, association of individuals, their lessees, trustees, or receivers appointed by a court, that may own, operate, manage, or control any plant or equipment within the state for the:

- (1) conveyance of telegraph or telephone messages;
- (2) production, transmission, delivery, or furnishing of heat, light,

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water, or power; or

(3) collection, treatment, purification, and disposal in a sanitary manner of liquid and solid waste, sewage, night soil, and industrial waste.

The term does not include a municipality that may acquire, own, or operate any of the foregoing facilities.

(b) "Municipal council", as used in this chapter, means the legislative body of any town or city in Indiana wherein the property of the public utility or any part thereof is located.

(c) "Municipality", as used in this chapter, means any city or town of Indiana.

(d) "Rate", as used in this chapter, means every individual or joint rate, fare, toll, charge, rental, or other compensation of any utility or any two (2) or more such individual or joint rates, fares, tolls, charges, rentals, or other compensation of any utility or any schedule or tariff thereof, but nothing in this subsection shall give the commission any control, jurisdiction, or authority over the rate charged by a municipally owned utility except as in this chapter expressly provided.

(e) "Service" is used in this chapter in its broadest and most inclusive sense and includes not only the use or accommodation afforded consumers or patrons but also any product or commodity furnished by any public or other utility and the plant, equipment, apparatus, appliances, property, and facility employed by any public or other utility in performing any service or in furnishing any product or commodity and devoted to the purposes in which such public or other utility is engaged and to the use and accommodation of the public.

(f) "Commission", as used in this chapter, means the commission created by IC 8-1-1-2.

(g) "Utility", as used in this chapter, means every plant or equipment within the state used for:

- (1) the conveyance of telegraph and telephone messages;
- (2) the production, transmission, delivery, or furnishing of heat, light, water, or power, either directly or indirectly to the public; or
- (3) collection, treatment, purification, and disposal in a sanitary manner of liquid and solid waste, sewage, night soil, and industrial waste.

The term does not include a municipality that may acquire, own, or operate facilities for the collection, treatment, purification, and disposal in a sanitary manner of liquid and solid waste, sewage, night soil, and industrial waste. A warehouse owned or operated by any person, firm, limited liability company, or corporation engaged in the business of

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operating a warehouse business for the storage of used household goods is not a public utility within the meaning of this chapter.

(h) "Municipally owned utility", as used in this chapter, includes every utility owned or operated by a municipality.

(i) "Indeterminate permit", as used in this chapter, means every grant, directly or indirectly from the state, to any corporation, company, partnership, limited liability company, individual, association of individuals, their lessees, trustees, or receivers appointed by a court, of power, right, or privilege to own, operate, manage, or control any plant or equipment, or any part of a plant or equipment, within this state, for the:

- (1) production, transmission, delivery, or furnishing of heat, light, water, or power, either directly or indirectly to or for the public;
- (2) collection, treatment, purification, and disposal in a sanitary manner of liquid and solid waste, sewage, night soil, and industrial waste; or
- (3) furnishing of facilities for the transmission of intelligence by electricity between points within this state;

which shall continue in force until such time as the municipality shall exercise its right to purchase, condemn, or otherwise acquire the property of such public utility, as provided in this chapter, or until it shall be otherwise terminated according to law.

SECTION 4. IC 8-1-2-1.1 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 1.1. A person or an entity that:**

- (1) transmits communications through Internet Protocol enabled retail services, including:**
  - (A) voice;**
  - (B) data;**
  - (C) video; or**
  - (D) any combination of voice, data, and video communications; or**
- (2) provides the necessary software, hardware, transmission service, or transmission path for communications described in subdivision (1);**

**is not a public utility solely by reason of engaging in any activity described in subdivisions (1) through (2).**

SECTION 5. IC 8-1-2-88.7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 88.7. (a)** As used in this section, "financial assistance" means:

- (1) a loan or loan guarantee; or
- (2) a lien accommodation provided to secure a loan made by

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another lender;  
that is made by the Rural Electrification Administration of the United States Department of Agriculture (REA) or by the Rural Telephone Bank.

(b) As used in this section, "REA borrower" means a telephone company ~~regulated under~~ **subject to** this chapter that is the recipient of financial assistance.

(c) ~~In determining rates for a telephone company that is regulated under this chapter and that is An REA borrower once the commission determines that property of the REA borrower is used and useful for the provision of telephone service and has been placed in service; the commission shall approve rates to be charged by~~ **shall charge rates sufficient to enable** the REA borrower ~~that will enable it to:~~

- (1) satisfy its reasonable expenses and obligations; and
- (2) earn a rate of return on the property sufficient to cover the REA borrower's cost of capital, including any financial assistance and the interest thereon.

(d) So long as there remains any unpaid portion of any financial assistance associated with the property of an REA borrower, ~~determined under subsection (c) to be used and useful and placed in service;~~ the rates of the REA borrower shall be set at a level sufficient to repay the financial assistance regardless of any change in the ~~regulatory~~ status of the property, including ~~without limitation;~~ the full or partial retirement of the property or any other change in the status of the property. ~~as reasonably necessary or used and useful.~~

SECTION 6. IC 8-1-2.6-0.1 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 0.1. (a) As used in this chapter, "basic telecommunications service" means stand alone telephone exchange service (as defined in 47 U.S.C. 153(47)) that:**

- (1) is provided to a residential customer through the customer's primary line; and**
- (2) is:**
  - (A) the sole service purchased by the customer;**
  - (B) not part of a package of services, a promotion, or a contract; or**
  - (C) not otherwise offered at a discounted price.**
- (b) The term includes, at a minimum, the following:**
  - (1) Voice grade access to the public switched telephone network with minimum bandwidth of three hundred (300) to three thousand (3,000) hertz.**
  - (2) Dual tone multifrequency signaling and single party**

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service.

**(3) Access to:**

- (A) emergency services, including access to 911 and enhanced 911 if provided by the local government having jurisdiction in the service area;**
- (B) operator services;**
- (C) local directory assistance;**
- (D) telephone relay services; and**
- (E) interexchange service.**

**(4) Toll limitation services for qualifying low income customers.**

**(c) The term does not include a functionally equivalent service provided by a person or an entity described in IC 8-1-2-1.1.**

SECTION 7. IC 8-1-2.6-0.2 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION TO READ AS FOLLOWS** [EFFECTIVE UPON PASSAGE]: **Sec. 0.2. As used in this chapter, "incumbent local exchange carrier" has the meaning set forth in 47 U.S.C. 251(h).**

SECTION 8. IC 8-1-2.6-0.3 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION TO READ AS FOLLOWS** [EFFECTIVE UPON PASSAGE]: **Sec. 0.3. (a) As used in this chapter, "nonbasic telecommunications service" means retail telecommunications service other than:**

**(1) basic telecommunications service, except when the service is purchased by the customer:**

- (A) in conjunction with another service;**
- (B) as part of a package of services, a promotion, or a contract; or**
- (C) at an otherwise discounted price;**

**(2) commercial mobile radio service (as defined in 47 CFR 51.5);**

**(3) services outside the jurisdiction of the commission under section 1.1 of this chapter; and**

**(4) switched and special access services.**

**(b) The term includes services included in:**

- (1) customer specific contracts;**
- (2) volume, term, and discount pricing options; and**
- (3) packages, bundles, and promotions, including offers designed to obtain new customers, retain existing customers, or bring back former customers.**

SECTION 9. IC 8-1-2.6-0.4 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION TO READ AS FOLLOWS** [EFFECTIVE

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UPON PASSAGE]: **Sec. 0.4. As used in this chapter, "provider" means a person or an entity that offers basic or nonbasic telecommunications service.**

SECTION 10. IC 8-1-2.6-0.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 0.5. As used in this chapter, "rates and charges", with respect to basic telecommunications service, means the monthly charge to a customer for basic telecommunications service, including:**

- (1) recurring charges for flat rate and message rate service; and**
- (2) any nonrecurring charge for installation or a line or service connection.**

SECTION 11. IC 8-1-2.6-0.6 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 0.6. As used in this chapter, "telecommunications" has the meaning set forth in 47 U.S.C. 153(43).**

SECTION 12. IC 8-1-2.6-0.7 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 0.7. As used in this chapter, "telecommunications service" has the meaning set forth in 47 U.S.C. 153(46).**

SECTION 13. IC 8-1-2.6-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 1. The Indiana general assembly hereby declares that:**

- (1) the maintenance of universal telephone service is a continuing goal of the commission in the exercise of its jurisdiction;**
- (2) competition has become commonplace in the provision of ~~certain telephone~~ telecommunications services in Indiana and the United States;**
- (3) advancements in and the convergence of technologies that provide voice, video, and data transmission, including:**
  - (A) landline, wireless, cable, satellite, and Internet transmissions; and**
  - (B) transmissions involving voice over Internet Protocol (VOIP), Internet Protocol enabled services, and voice over power lines;**

**are substantially increasing consumer choice, reinventing the marketplace with unprecedented speed, and making available highly competitive products and services and new methods of delivering local exchange service;**

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~~(3)~~ **(4)** traditional ~~commission~~ regulatory policies, ~~and~~ practices, and ~~existing~~ statutes are not designed to deal with a competitive environment **and technological advancements;**

~~(4)~~ **(5)** an environment in which Indiana consumers will have available the widest array of state-of-the-art ~~telephone~~ **communications** services at the most economic and reasonable cost possible will necessitate full and fair **facilities based** competition in the delivery of ~~certain telephone~~ **telecommunications** services throughout ~~the state;~~ **Indiana;** and ~~(5)~~ **(6)** **streamlining of, and** flexibility in, the regulation of providers of ~~telephone~~ **telecommunications** services, **regardless of the technology used,** is essential to the well-being of ~~the state;~~ **Indiana,** its economy, and its citizens, and that the public interest requires that the commission be authorized to formulate and adopt rules and policies as will permit the commission, in the exercise of its expertise, to regulate and control the provision of ~~telephone~~ **telecommunications** services to the public in an increasingly competitive **and technologically changing** environment, giving due regard to the interests of consumers and the public, **the ability of market forces to encourage innovation and investment,** and to the continued **universal** availability of ~~universal telephone~~ **basic telecommunications** service.

SECTION 14. IC 8-1-2.6-1.1 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 1.1. The commission shall not exercise jurisdiction over:**

- (1) advanced services (as defined in 47 CFR 51.5);**
- (2) broadband service, however defined or classified by the Federal Communications Commission;**
- (3) information services (as defined in 47 U.S.C. 153(20));**
- (4) Internet Protocol enabled retail services:**
  - (A) regardless of how the service is classified by the Federal Communications Commission; and**
  - (B) except as expressly permitted under IC 8-1-2.8;**
- (5) commercial mobile service (as defined in 47 U.S.C. 332);**  
**or**
- (6) any service not commercially available on March 28, 2006.**

SECTION 15. IC 8-1-2.6-1.2 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 1.2. Except as provided in sections 1.5(c), 12, and 13 of this chapter, after March 27, 2006, the commission shall not exercise jurisdiction over any nonbasic**

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telecommunications service.

SECTION 16. IC 8-1-2.6-1.3 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 1.3. (a) As used in this section, "broadband service" means a connection to the Internet that provides capacity for transmission at an average speed of at least one and one-half (1.5) megabits per second downstream and at least three hundred eighty-four (384) kilobits per second upstream, regardless of the technology or medium used to provide the connection. The term includes a connection to the Internet provided by wireless technology, copper wire, fiber optic cable, coaxial cable, broadband over power lines, or other facilities or future technologies. The term does not include any of the following:**

**(1) Value added services in which computer processing applications are used to act on the form, content, code, or protocol of any information transmitted.**

**(2) Value added services providing text, graphic, video, or audio program content for a purpose other than transmission.**

**(3) The transmission of video programming or other programming:**

**(A) provided by; or**

**(B) generally considered comparable to programming provided by;**

**a television broadcast station or a radio broadcast station, including cable TV, direct broadcast satellite, and digital television.**

**(4) A connection to the Internet provided through satellite technology.**

**(b) As used in this section, "rate transition period" refers to the period beginning March 28, 2006, and ending June 30, 2009, during which a provider may act under this section to increase the provider's flat monthly rate for basic telecommunications service offered in one (1) or more local exchange areas in Indiana.**

**(c) This subsection applies to a provider that offers basic telecommunications service in one (1) or more local exchange areas in Indiana on March 27, 2006. Subject to subsection (e), during the rate transition period, a provider may act without the prior approval of the commission to increase the provider's flat monthly rate for basic telecommunications service in any local exchange area in which the provider offers basic telecommunications service on March 27, 2006. Subject to subsection (h), a provider may increase the provider's flat monthly rate for basic**

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telecommunications service in a local exchange area as follows:

(1) The provider may increase the flat monthly rate not more frequently than once during each successive twelve (12) month period during the period beginning March 28, 2006, and ending June 30, 2009. The amount of any increase in the flat monthly rate imposed during a twelve (12) month period described in this subdivision may not exceed one dollar (\$1).

If a provider:

(A) does not impose an increase during any twelve (12) month period described in this subdivision; or

(B) imposes an increase less than the maximum one dollar (\$1) increase allowed under this subdivision during any twelve (12) month period described in this subdivision;

the provider may not impose the unused increase in any subsequent twelve (12) month period described in this subdivision.

(2) The provider may increase the flat monthly rate not more frequently than three (3) times during the entire rate transition period. The amount of the total increase in the flat monthly rate during the transition period may not exceed three dollars (\$3), as calculated based on the flat monthly rate in effect in the local exchange area on March 27, 2006.

The provider shall provide the commission and all affected customers thirty (30) days advance notice of each rate increase under this subsection.

(d) This subsection applies to a provider that, at any time during the rate transition period, begins offering basic telecommunications service in a local exchange area in Indiana in which the provider did not offer basic telecommunications service on March 27, 2006. In accordance with the procedures set forth in IC 8-1-2, the commission shall approve the initial rates and charges for basic telecommunications service first offered by the provider in a local exchange area at any time during the rate transition period. Subject to subsections (e) and (h), beginning twelve (12) months after the commission approves the initial rates and charges for the local exchange area, the provider may increase the initial flat monthly rate for basic telecommunications service in accordance with subsection (c). However, subsection (c)(2) does not apply to a rate increase under this subsection. The provider may not increase the flat monthly rate under this subsection during the rate transition period more frequently than the number of twelve (12) month periods remaining in the rate transition period at the

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time the provider is first eligible to increase the initial flat monthly rate under this subsection. The amount of the total increase in the flat monthly rate during the rate transition period may not exceed the product of:

- (1) one dollar (\$1); multiplied by
- (2) the number of twelve (12) month periods remaining in the rate transition period at the time the provider is first eligible to increase the initial flat monthly rate under this subsection.

The provider shall provide the commission and all affected customers thirty (30) days advance notice of each rate increase under this subsection.

(e) This subsection applies to a provider that acts under subsection (c) or (d) to increase the provider's flat monthly rate for basic telecommunications service in a local exchange area in Indiana. Not later than eighteen (18) calendar months after the provider's first rate increase in the local exchange area under subsection (c) or (d), the provider must offer broadband service to at least fifty percent (50%) of the households located in the local exchange area, at the average speeds set forth in subsection (a), as determined by the commission after notice and an opportunity for hearing. The commission may extend the eighteen (18) month period allowed under this subsection by not more than nine (9) additional calendar months for good cause shown by the provider. The commission shall hold a hearing and make a finding as to whether the provider offers broadband service to at least fifty percent (50%) of the households in the local exchange area not later than the earlier of the following:

- (1) Ninety (90) days after a request by the provider for a hearing and determination by the commission. The provider may request a hearing and determination under this subdivision at any time before the expiration of:

- (A) the eighteen (18) month period allowed by this subsection; or
- (B) any extension of the eighteen (18) month period allowed by the commission under this subsection.

- (2) Ninety (90) days after the expiration of:

- (A) the eighteen (18) month period allowed by this subsection; or
- (B) any extension of the eighteen (18) month period allowed by the commission under this subsection;

if the provider does not request a hearing and determination under subdivision (1).

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(f) If, after a hearing under subsection (e), the commission determines that the provider does not offer broadband service to at least fifty percent (50%) of the households in the local exchange area not later than eighteen (18) months after the provider's first rate increase in the local exchange area under subsection (c) or (d), the commission may require the provider to:

(1) refund to customers; or

(2) pay to the commission as a civil penalty;

an amount equal to the incremental revenue accruing to the provider as a result of all rate increases imposed by the provider in the local exchange area under subsection (c) or (d), plus interest. The commission shall determine the amount of interest added to a refund or payment made under this subsection by applying the average interest rate paid during the eighteen (18) months after the provider's first rate increase to depositors by the fifteen (15) largest banks with their principal offices in Indiana. A determination by the commission under this subsection is subject to appeal under IC 8-1-3.

(g) This subsection applies to an incumbent local exchange carrier that offers basic telecommunications service in one (1) or more local exchange areas in Indiana on March 27, 2006. Throughout the rate transition period, the incumbent local exchange carrier shall continue to make available a flat monthly rate with unlimited local calling for basic telecommunications service in all local exchange areas in which the incumbent local exchange carrier offers basic telecommunications service on March 27, 2006, regardless of whether the incumbent local exchange carrier increases the flat monthly rate in any of those local exchange areas under subsection (c). Throughout the transition period, an extended area of service in which the incumbent local exchange carrier offers basic telecommunications service on March 27, 2006, may not be reduced in area or scope without the approval of the commission after notice and hearing.

(h) If, at any time during the rate transition period, the commission determines in accordance with IC 8-1-2-113 that an emergency exists, the commission may act under IC 8-1-2-113 to temporarily alter, amend, or suspend the limits on the flat monthly rate increases set forth in subsections (c) and (d) if necessary to maintain a provider's financial integrity and ability to provide adequate basic telecommunications service. The commission shall reimplement the limits on flat monthly rate increases, as set forth in subsections (c) and (d), when the commission is satisfied the

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emergency no longer exists.

(i) After June 30, 2009, a provider that offers basic telecommunications service in Indiana:

- (1) must offer a flat monthly rate with unlimited local calling for basic telecommunications service in each local exchange area in Indiana in which the provider offers basic telecommunications service; and
- (2) may not, in any local exchange area in Indiana in which the provider offers basic telecommunications service, offer any service plan for basic telecommunications service that includes measured local service.

SECTION 17. IC 8-1-2.6-1.4 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 1.4. Except as provided in sections 1.5(c), 12, and 13 of this chapter, after June 30, 2009, the commission shall not exercise jurisdiction over basic telecommunications service.**

SECTION 18. IC 8-1-2.6-1.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 1.5. (a) In acting to impose any requirements or set any prices concerning:**

- (1) interconnection with the facilities and equipment of providers for purposes of 47 U.S.C. 251(c)(2);
- (2) the resale of telecommunications service for purposes of 47 U.S.C. 251(c)(4); or
- (3) the unbundled access of one (1) provider to the network elements of another provider for purposes of 47 U.S.C. 251(c)(3);

the commission shall not exceed the authority delegated to the commission under federal laws and regulations with respect to those actions. This subsection does not affect the commission's authority under IC 8-1-2-5.

(b) Subject to any regulations adopted by the Federal Communications Commission, this section does not affect:

- (1) the commission's authority to mediate a dispute between providers under 47 U.S.C. 252(a);
- (2) the commission's authority to arbitrate a dispute between providers under 47 U.S.C. 252(b);
- (3) the commission's authority to approve an interconnection agreement under 47 U.S.C. 252(e), including the authority to establish service quality metrics and liquidated damages;
- (4) the commission's authority to review and approve a

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provider's statement of terms and conditions under 47 U.S.C. 252(f);

(5) a provider's ability to file a complaint with the commission to have a dispute decided by the commission:

(A) after notice and hearing; and

(B) in accordance with this article; or

(6) the commission's authority to resolve an interconnection dispute between providers under the expedited procedures set forth in 170 IAC 7-7.

(c) If a provider's rates and charges for intrastate switched or special access service are:

(1) at issue in a dispute that the commission is authorized to mediate, arbitrate, or otherwise determine under state or federal law; or

(2) included in an interconnection agreement or a statement of terms and conditions that the commission is authorized to review or approve under state or federal law;

the commission shall consider the provider's rates and charges for intrastate switched or special access service to be just and reasonable if the intrastate rates and charges mirror the provider's interstate rates and charges for switched or special access service.

SECTION 19. IC 8-1-2.6-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. (a) Notwithstanding any other statute, the commission may:

(1) on its own motion;

(2) at the request of the utility consumer counselor;

(3) at the request of one (1) or more telephone companies; or

(4) at the request of any class satisfying the standing requirements of IC 8-1-2-54;

enter an order, after notice and hearing, that the public interest requires the commission to commence an orderly process to decline to exercise, in whole or in part, its jurisdiction over telephone companies or certain telephone services. This section applies to rules and orders that:

(1) concern telecommunications service or providers of telecommunications service; and

(2) may be adopted or issued by the commission under the authority of state or federal law.

(b) Rules and orders described in this section:

(1) may be adopted or issued only after notice and hearing, unless:

(A) the commission determines in accordance with IC 8-1-2-113 that an emergency exists that requires the

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commission or a provider to take immediate action to:

(i) prevent injury to the business or interests of the citizens of Indiana; or

(ii) maintain a provider's financial integrity and ability to provide adequate basic telecommunications service;

(B) the commission is authorized under IC 8-1-2 to adopt a particular rule or issue a particular order without the necessity of a hearing; or

(C) after receiving notice of the commission's proposed action, all parties to a proceeding consent to the commission taking action without a hearing; and

(2) must be:

(A) consistent with this chapter; and

(B) in the public interest, as determined by the commission under subsection (d).

(c) Rules and orders described in this section must promote one

(1) or more of the following:

(1) Cost minimization for providers to the extent that a provider's quality of service and facilities are not diminished.

(2) A more accurate evaluation by the commission of a provider's physical or financial conditions or needs as well as a less costly regulatory procedure for either the provider, the provider's customers, or the commission.

(3) Consumer access to affordable basic telecommunications service.

(4) Development of depreciation guidelines and procedures that recognize technological obsolescence.

(5) Increased provider management efficiency beneficial to customers.

(6) Regulation consistent with a competitive environment.

~~(b)~~ (d) In determining whether the public interest will be served, as required under subsection (b), the commission shall consider:

(1) whether technological change, competitive forces, or regulation by other state and federal regulatory bodies render the exercise of jurisdiction by the commission unnecessary or wasteful;

(2) whether the exercise of commission jurisdiction produces tangible benefits to ~~telephone company~~ the customers of providers; and

(3) whether the exercise of commission jurisdiction inhibits a regulated entity from competing with unregulated providers of functionally similar ~~telephone~~ telecommunications services or

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equipment.

(c) The commission may:

- (1) on its own motion;
- (2) at the request of the utility consumer counselor;
- (3) at the request of one (1) or more telephone companies; or
- (4) at the request of any class satisfying the standing requirements of IC 8-1-2-54;

enter an order notifying any telephone company or class of telephone companies jurisdiction over which was either limited or not exercised according to this section that the commission will proceed to exercise jurisdiction over the telephone company, class of telephone companies, or class of telephone services provided by telephone companies to the extent the commission considers appropriate unless one (1) or more of those telephone companies formally request a hearing within fifteen (15) days following the date of such order.

(e) This section does not affect the commission's authority under IC 8-1-2-5.

SECTION 20. IC 8-1-2.6-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 4. (a) A regulatory flexibility committee is established to monitor competition in the telephone telecommunications industry.

(b) The committee is composed of the members of a house standing committee selected by the speaker of the house of representatives and a senate standing committee selected by the president pro tempore of the senate. In selecting standing committees under this subsection, the speaker and president pro tempore shall determine which standing committee of the house of representatives and the senate, respectively, has subject matter jurisdiction that most closely relates to the electricity, gas, energy policy, and telecommunications jurisdiction of the regulatory flexibility committee. The chairpersons of the standing committees selected under this subsection shall co-chair the regulatory flexibility committee.

(c) The commission shall, by July 1 of each year, prepare for presentation to the regulatory flexibility committee an analysis of a report that includes the following:

- (1) An analysis of the effects of competition and technological change on universal service and on pricing of all telephone telecommunications services under the jurisdiction of the commission offered in Indiana.
- (2) An analysis of the status of competition and technological change in the provision of video service (as defined in IC 8-1-34-14) to Indiana customers, as determined by the

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commission in carrying out its duties under IC 8-1-34. The commission's analysis under this subdivision must include a description of:

- (A) the number of multichannel video programming distributors offering video service to Indiana customers;
  - (B) the technologies used to provide video service to Indiana customers; and
  - (C) the effects of competition on the pricing and availability of video service in Indiana.
- (3) Beginning with the report due July 1, 2007, and in each report due in an odd-numbered year after July 1, 2007:
- (A) an identification of all telecommunications rules and policies that are eliminated by the commission under section 4.1 of this chapter during the two (2) most recent state fiscal years; and
  - (B) an explanation why the telecommunications rules and policies identified under clause (A) are no longer in the public interest or necessary to protect consumers.

(d) In addition to reviewing the commission report prepared under subsection (c), the regulatory flexibility committee shall also issue a report and recommendations to the legislative council by November 1 of each year that is based on a review of the following issues:

- (1) The effects of competition **and technological change** in the ~~telephone~~ **telecommunications** industry and impact of competition on available subsidies used to maintain universal service.
- (2) The status of modernization of the ~~public telephone network~~ **publicly available telecommunications infrastructure** in Indiana and the incentives required to further enhance this infrastructure.
- (3) The effects on economic development and educational opportunities of ~~this~~ **the modernization described in subdivision (2).**
- (4) The current ~~method~~ **methods** of regulating ~~telephone companies~~ **providers, at both the federal and state levels, and the method's effectiveness of the methods.**
- (5) The economic and social effectiveness of current ~~telephone telecommunications~~ **service pricing.**
- (6) All other telecommunications issues the committee deems appropriate.

The report and recommendations issued under this subsection to the legislative council must be in an electronic format under IC 5-14-6.

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(e) The regulatory flexibility committee shall meet on the call of the co-chairpersons to study telecommunications issues described in subsection (d). The committee shall, with the approval of the commission, retain the independent consultants the committee considers appropriate to assist the committee in the review and study. The expenses for the consultants shall be paid by the commission.

SECTION 21. IC 8-1-2.6-4.1 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 4.1. (a) Not later than:**

**(1) July 1, 2007; and**

**(2) July 1 of each odd-numbered year after July 1, 2007;**

**the commission shall, through a rulemaking proceeding under IC 4-22-2 or another commission proceeding, identify and eliminate rules and policies concerning telecommunications service and telecommunications service providers if the rules or policies are no longer necessary in the public interest or for the protection of consumers as the result of meaningful economic competition between providers of telecommunications services.**

**(b) Not later than July 1, 2007, the commission shall adopt rules under IC 4-22-2 to require a telecommunications service provider, at any time the provider communicates with a residential customer about changing the customer's basic telecommunications service to nonbasic telecommunications service, to notify the residential customer of:**

**(1) the option of basic telecommunications service; and**

**(2) any regulatory protections, including pricing or quality of service protections, that the residential customer would forego by switching to nonbasic telecommunications service.**

**(c) In carrying out this section, the commission shall promote the policies and purposes set forth in this chapter. Beginning in 2007, and in each odd-numbered year after 2007, the commission's annual report to the regulatory flexibility committee under section 4 of this chapter must:**

**(1) identify any regulation or policy eliminated by the commission under this section during the two (2) most recent state fiscal years; and**

**(2) explain why the regulation or policy is no longer in the public interest or necessary to protect consumers.**

SECTION 22. IC 8-1-2.6-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 8. (a)** As used in this section, "rate reduction" means a decrease in either recurring or nonrecurring rates or charges.

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(b) Notwithstanding any other provision of this chapter or any other statute, a ~~telephone company provider~~ may ~~subject to the prior approval of the commission~~, participate in any rate reduction program for residential customers funded from revenues provided by any governmental entity or other revenues administered by an agency of that entity.

SECTION 23. IC 8-1-2.6-12 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 12. This chapter does not terminate or otherwise change the terms and conditions of a settlement agreement approved by the commission under this chapter before July 29, 2004. However, a provider may renegotiate the terms and conditions of the settlement agreement at any time before the expiration of the settlement agreement.**

SECTION 24. IC 8-1-2.6-13 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 13. (a) As used in this section, "communications service" has the meaning set forth in IC 8-1-32.5-3.**

**(b) As used in this section, "communications service provider" means a person or an entity that offers communications service to customers in Indiana, without regard to the technology or medium used by the person or entity to provide the communications service. The term includes a provider of commercial mobile service (as defined in 47 U.S.C. 332).**

**(c) As used in this section, "dark fiber" refers to unused capacity in a communications service provider's communications network, including fiber optic cable or other facilities:**

- (1) in place within a public right-of-way; but**
- (2) not placed in service by a communications service provider.**

**(d) Notwithstanding sections 1.2, 1.4, and 1.5 of this chapter, the commission may do the following both during and after the rate transition period described in section 1.3 of this chapter, except as otherwise provided in this subsection:**

- (1) Subject to section 12 of this chapter, enforce the terms of a settlement agreement approved by the commission before July 29, 2004. The commission's authority under this subdivision continues for the duration of the settlement agreement.**
- (2) Fulfill the commission's duties under IC 8-1-2.8 concerning the provision of dual party relay services to**

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hearing impaired and speech impaired persons in Indiana.

(3) Fulfill the commission's duties under IC 8-1-19.5 concerning the administration of the 211 dialing code for communications service used to provide access to human services information and referrals.

(4) Fulfill the commission's responsibilities under IC 8-1-29 to adopt and enforce rules to ensure that a customer of a telecommunications provider is not:

(A) switched to another telecommunications provider unless the customer authorizes the switch; or

(B) billed for services by a telecommunications provider that without the customer's authorization added the services to the customer's service order.

(5) Fulfill the commission's obligations under:

(A) the federal Telecommunications Act of 1996 (47 U.S.C. 151 et seq.); and

(B) IC 20-20-16;

concerning universal service and access to telecommunications service and equipment, including the designation of eligible telecommunications carriers under 47 U.S.C. 214.

(6) Perform any of the functions described in section 1.5(b) of this chapter.

(7) After June 30, 2009, perform the commission's responsibilities under IC 8-1-32.5 to:

(A) issue; and

(B) maintain records of;

certificates of territorial authority for communications service providers offering communications service to customers in Indiana.

(8) Perform the commission's responsibilities under IC 8-1-34 concerning the issuance of certificates of franchise authority to multichannel video programming distributors offering video service to Indiana customers.

(9) After June 30, 2009, require a communications service provider, other than a provider of commercial mobile service (as defined in 47 U.S.C. 332), to report to the commission on an annual basis, or more frequently at the option of the provider, any of the following information:

(A) Service quality goals and performance data. The commission shall make any information or data submitted under this subsection available:

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- (i) for public inspection and copying at the offices of the commission under IC 5-14-3; and
- (ii) electronically through the computer gateway administered by the office of technology established by IC 4-13.1-2-1;

to the extent the information or data are not exempt from public disclosure under IC 5-14-3-4(a).

(B) Information concerning the:

- (i) capacity;
- (ii) location; and
- (iii) planned or potential use of;

the communications service provider's dark fiber in Indiana.

(C) Information concerning the communications service offered by the communications service provider in Indiana, including:

- (i) the types of service offered; and
- (ii) the areas in Indiana in which the services are offered.

(D) Any information needed by the commission to prepare the commission's report to the regulatory flexibility committee under section 4 of this chapter.

(E) Any other information that the commission is authorized to collect from a communications service provider under state or federal law.

The commission may revoke a certificate issued to a communications service provider under IC 8-1-32.5 if the communications service provider fails or refuses to report any information required by the commission under this subdivision. However, this subdivision does not empower the commission to require a communications service provider to disclose confidential and proprietary business plans and other confidential information without adequate protection of the information. The commission shall exercise all necessary caution to avoid disclosure of confidential information supplied under this subdivision.

(10) Perform the commission's duties under IC 8-1-32.4 with respect to telecommunications providers of last resort, to the extent of the authority delegated to the commission under federal law to perform those duties.

(11) Perform the commission's duties under IC 8-1-2-5 with respect to interconnection.

(12) Establish and administer the Indiana Lifeline assistance

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program under IC 8-1-36.

(13) After June 30, 2009, collect and maintain from a provider of commercial mobile service (as defined in 47 U.S.C. 332) the following information:

- (A) The address of the provider's website.
- (B) All toll free telephone numbers and other customer service telephone numbers maintained by the provider for receiving customer inquiries and complaints.
- (C) An address and other contact information for the provider, including any telephone number not described in clause (B).

The commission shall make any information submitted by a provider under this subdivision available on the commission's website. The commission may also make available on the commission's website contact information for the Federal Communications Commission and the Cellular Telephone Industry Association.

(14) Fulfill the commission's duties under any state or federal law concerning the administration of any universally applicable dialing code for any communications service.

(e) After June 30, 2009, the commission does not have jurisdiction over any of the following with respect to a communications service provider:

- (1) Rates and charges for communications service provided by the communications service provider, including the filing of schedules or tariffs setting forth the provider's rates and charges.
- (2) Depreciation schedules for any of the classes of property owned by the communications service provider.
- (3) Quality of service provided by the communications service provider, other than the imposition of a reporting requirement under subsection (d)(9)(A).
- (4) Long term financing arrangements or other obligations of the communications service provider.
- (5) Except as provided in subsection (d), any other aspect regulated by the commission under this title before July 1, 2009.

(f) After June 30, 2009, the commission has jurisdiction over a communications service provider only to the extent that jurisdiction is:

- (1) expressly granted by state or federal law, including:
  - (A) a state or federal statute;

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(B) a lawful order or regulation of the Federal Communications Commission; or

(C) an order or a ruling of a state or federal court having jurisdiction; or

(2) necessary to administer a federal law for which regulatory responsibility has been delegated to the commission by federal law.

SECTION 25. IC 8-1-2.6-14 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 14. This chapter does not affect the rights and obligations of any person or entity concerning the payment of switched network access rates or other carrier compensation concerning:**

- (1) Internet Protocol enabled services;
- (2) advanced services (as defined in 47 CFR 51.5);
- (3) broadband service; or
- (4) other Internet access services.

SECTION 26. IC 8-1-2.6-15 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 15. (a) Except as provided in subsection (b), if there is a conflict between this chapter and another provision of this article, this chapter controls.**

**(b) This chapter does not affect the rights of:**

(1) a provider that has withdrawn from the commission's jurisdiction under IC 8-1-2-88.5 or IC 8-1-17-22.5 before March 28, 2006, to remain outside the jurisdiction of the commission during the transition period described in section 1.3 of this chapter; or

(2) a provider that:

(A) has not withdrawn from the commission's jurisdiction under IC 8-1-2-88.5 or IC 8-1-17-22.5 before March 28, 2006; and

(B) is otherwise eligible to withdraw from the commission's jurisdiction under IC 8-1-2-88.5 or IC 8-1-17-22.5;

to withdraw from the commission's jurisdiction under IC 8-1-2-88.5 or IC 8-1-17-22.5 at any time during the transition period described in section 1.3 of this chapter.

Except as provided in section 13(d)(5) of this chapter, after June 30, 2009, section 1.4 of this chapter applies to a provider described in this subsection.

SECTION 27. IC 8-1-2.6-16 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE

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UPON PASSAGE]: Sec. 16. (a) As used in this section, "payphone service provider" means an entity, other than an incumbent local exchange carrier, that owns and operates:

- (1) public or semipublic pay telephones; or
- (2) pay telephones used to provide telephone service in correctional institutions.

(b) Notwithstanding any other statute, the commission shall retain jurisdiction to establish just and reasonable rates that may be charged by an incumbent local exchange carrier to a payphone service provider. Rates established under this section must be:

- (1) based on the costs incurred by the incumbent local exchange carrier to provide the service;
- (2) consistent with the requirements of 47 U.S.C. 276;
- (3) nondiscriminatory; and
- (4) consistent with the pricing guidelines for payphone service providers established by the Federal Communications Commission.

SECTION 28. IC 8-1-2.8-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 3. (a) As used in this chapter, "dual party relay services" means ~~telephone~~ **telecommunications** transmission services that provide the ability for a person who has a hearing impairment or speech impairment to engage in communication ~~by wire or radio~~ with a hearing person in a manner that is functionally equivalent to the ability of an individual who does not have a hearing impairment or speech impairment to communicate using voice communication services. ~~by wire or radio.~~

(b) The term includes services that enable two-way communication between a person who uses a telecommunications device for the deaf or other nonvoice terminal and a person who does not use such a device.

SECTION 29. IC 8-1-2.8-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 8. As used in this chapter, "local exchange ~~telephone~~ company" or "LEC" ~~means a company authorized by the commission to provide, among other services, local exchange access service.~~ refers to any communications service provider (as defined in IC 8-1-2.6-13(b)) that:

- (1) has a certificate of territorial authority on file with the commission; and
- (2) is required to provide dual party relay services to hearing impaired and speech impaired persons under federal law.

SECTION 30. IC 8-1-2.8-10 IS AMENDED TO READ AS

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FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 10. The general assembly finds and declares the following:

- (1) That it is in the public interest of the state to promptly provide hearing impaired or speech impaired persons with access to ~~telephone~~ **telecommunications** services that are functionally equivalent to those provided to hearing persons.
- (2) That Title IV of the ADA mandates that each telephone company providing telephone service within the state must provide dual party relay services on or before July 26, 1993, to hearing impaired and speech impaired persons within the territorial area or areas it serves in a manner that meets or exceeds the requirements of regulations prescribed by the FCC.
- (3) That the most efficient, cost effective, and fair method for LECs to provide dual party relay services to hearing impaired and speech impaired persons and to comply with the federal mandate without the use of tax revenues is the establishment of the Indiana Telephone Relay Access Corporation for the Hearing and Speech Impaired under this chapter.
- (4) That the provision of dual party relay services to hearing impaired and speech impaired persons can be enhanced by providing in appropriate circumstances in the sole discretion of the InTRAC telecommunications devices that facilitate access to the dual party relay services.

SECTION 31. IC 8-1-2.8-18 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 18. The articles of incorporation of the InTRAC must provide the following:

- (1) The name of the corporation shall be "Indiana Telephone Relay Access Corporation for the Hearing and Speech Impaired".
- (2) The sole purpose for which the InTRAC shall be organized and operated is to provide at the lowest cost reasonably possible:
  - (A) on behalf of ~~telephone companies~~ **LECs** and the citizens of Indiana; and
  - (B) in conjunction with ~~telephone companies;~~ **LECs;** adequate and dependable dual party relay services that may include in appropriate circumstances in the sole discretion of the InTRAC telecommunications devices to hearing impaired and speech impaired persons within the territorial area **in Indiana** that ~~telephone companies~~ **LECs** serve in a manner that meets or exceeds the requirements of regulations prescribed by the FCC.
- (3) The InTRAC must have authority to perform any lawful act that is necessary, convenient, or expedient to accomplish the purpose for which the InTRAC is formed.

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(4) No part of the net earnings of the InTRAC may inure to the benefit of any member, director, or officer of the InTRAC, nor shall any member of the InTRAC receive any earnings from the corporation except as follows:

(A) A member may be an independent contractor, a supplier, a vendor, or an authorized agent of the InTRAC and may receive fair and reasonable compensation for the member's provision of goods or services.

(B) An officer may receive reasonable compensation for services that the officer performs in the officer's capacity as an officer of the InTRAC.

(C) A director may be reimbursed for expenses incurred by the director in the performance of the director's duties.

(5) The InTRAC may not:

(A) make an advancement for services to be performed in the future; or

(B) make a loan of money or property to any director or officer of the corporation.

(6) No member, director, or officer of the InTRAC or any private individual may share in the distribution of any of the assets of the InTRAC upon its dissolution.

(7) If there is a dissolution of the InTRAC, any of the assets of the InTRAC available for distribution shall be distributed to a charity:

(A) selected by the board of directors of the InTRAC; and

(B) having a purpose that includes providing services to hearing impaired and speech impaired persons.

(8) The InTRAC shall have one (1) class of members consisting of those ~~telephone companies~~ **communications service providers** that are designated as authorized LECs by the commission.

(9) Each member of the InTRAC shall serve as a member for as long as the commission finds that the member is a LEC. A member's:

(A) right to vote at meetings of the members of the InTRAC; and

(B) right, title, and interest in or to the corporation; cease on the termination of a member's membership.

(10) Each member present in person or by proxy at a meeting of the members of the InTRAC may cast one (1) vote upon each question voted upon at:

(A) all meetings of the members; and

(B) in any election of a director of the InTRAC.

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(11) The board of directors of the InTRAC consists of seven (7) directors selected as follows:

- (A) Six (6) directors elected by the members of the InTRAC.
- (B) The director of the state office of deaf and hearing impaired services.

(12) The business, property, and affairs of the InTRAC are managed and controlled by the board of directors of the InTRAC.

SECTION 32. IC 8-1-2.8-20 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 20. (a) In pursuit of its purpose, the InTRAC may do the following:

- (1) Perform audits and tests of the accounts of a LEC to verify the amounts described in section 12 of this chapter.
- (2) Provide by contract dual party relay services to ~~telephone companies~~ **communications service providers** operating outside of the state **Indiana** if the effect of the contract:
  - (A) is to decrease the amount of surcharges imposed on the customers of members of the InTRAC; and
  - (B) does not sacrifice the quality of service that InTRAC provides for those customers in the absence of a contract.

(b) The actions described in subsection (a) are examples and are not intended to limit in any way the scope or types of actions that the InTRAC may take in pursuit of its purposes.

SECTION 33. IC 8-1-2.8-21 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 21. The InTRAC shall do the following:

- (1) Establish, implement, and administer, in whole or in part, a statewide dual party relay service system. Any contract for the supply or operation of a dual party relay service system or for the supply of telecommunications devices shall be provided through a competitively selected vendor.
- (2) Determine the terms and manner in which each LEC shall pay to the InTRAC the surcharge required under this chapter.
- (3) Annually review the costs it incurred during prior periods, make reasonable projections of anticipated funding requirements for future periods, and file a report of the results of the review and projections with the commission by May 1 of each year.
- (4) Annually employ an independent accounting firm to prepare audited financial statements for the end of each fiscal year of the InTRAC to consist of:
  - (A) a balance sheet;
  - (B) a statement of income; and
  - (C) a statement of cash flow;

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and file a copy of these financial statements with the commission before May 2 of each year.

(5) Enter into contracts with any ~~telephone company authorized by the commission to provide services within Indiana LEC~~ to provide dual party relay services for the ~~telephone company, LEC~~, upon request by the ~~telephone company, LEC~~. However, the InTRAC:

(A) shall require reasonable compensation from the ~~telephone company LEC~~ for the provision of these services;

(B) is not required to contract with its members; and

(C) shall provide dual party relay services to InTRAC members **for communications service originating with the members' Indiana customers** for no consideration other than the payment to the InTRAC of the surcharges collected by the member under this chapter.

(6) Send to each of its members and file with the governor and the general assembly before May 2 of each year an annual report that contains the following:

(A) A description of the InTRAC's activities for the previous fiscal year.

(B) A description and evaluation of the dual party relay services that the InTRAC provides.

(C) A report of the volume of services the InTRAC provided during the previous fiscal year.

(D) A copy of the financial statements that subdivision (4) requires.

A report filed under this subdivision with the general assembly must be in an electronic format under IC 5-14-6.

SECTION 34. IC 8-1-2.8-22 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 22. If:

(1) a ~~telephone company~~ **communications service provider** that is not a member of InTRAC originates, carries, or terminates, in whole or in part, any telecommunication message that uses the InTRAC's dual party relay services; and

(2) refuses to:

(A) enter into a contract with the InTRAC as provided in section 21(5) of this chapter; or

(B) pay any sums due under such a contract;

the InTRAC may apply to the commission for an order requiring just and reasonable payments or the payments that are due under the contract. The InTRAC may enforce this order in the courts of the state.

SECTION 35. IC 8-1-2.8-23 IS AMENDED TO READ AS

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FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 23. (a) If the InTRAC meets the requirements of sections 18 and 21 of this chapter, the InTRAC:

- (1) is not a public utility;
- (2) is not a telephone company **or a communications service provider**; and
- (3) is free from the jurisdiction and oversight of the commission except as specifically provided in this chapter.

(b) The InTRAC is not an affiliated interest (as defined in IC 8-1-2-49). An officer, a director, or a member of the InTRAC may not be construed to be an affiliated interest solely because that person or entity is an officer, a director, or a member of the InTRAC.

SECTION 36. IC 8-1-2.8-25 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 25. The following are not liable in any civil action for any injuries or loss to persons or property incurred by any person as a result of any act or omission of any person or entity listed in subdivisions (1) through (3) in connection with the development, adoption, implementation, maintenance, or operation of any system that provides dual party relay services or telecommunications devices, except for injuries or losses incurred as a result of willful or wanton misconduct:

- (1) The InTRAC.
- (2) A ~~telephone company~~ **LEC** providing dual party relay services.
- (3) An employee, a director, an officer, or an agent of an entity listed in subdivision (1) or (2).

SECTION 37. IC 8-1-2.9-0.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 0.5. As used in this chapter, "**telecommunications service provider**" means a person that offers telecommunications service (as defined in 47 U.S.C. 153(46)).

SECTION 38. IC 8-1-2.9-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1. As used in this chapter, "caller ID service" means an optional service provided by a ~~telephone company~~ **telecommunications service provider** that permits a ~~telephone telecommunications service~~ customer equipped with a display device to view the telephone number of the ~~telephone~~ from which a call is being placed before answering the ~~telephone~~ **call**.

SECTION 39. IC 8-1-2.9-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. (a) The commission shall approve any ~~telephone company~~ petition **by a telecommunications service provider** for commission approval of

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caller ID service. The commission may not require that caller ID service be provided with blocking, except that the commission may approve either per-call or per-line blocking for law enforcement and crisis intervention agencies that are certified by the commission.

(b) Rates and charges for caller ID services are not subject to commission approval **under this section.**

SECTION 40. IC 8-1-17-2.1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 2.1. (a) If the requirements of subsection (b) are met, a local cooperative telephone corporation formed under Acts 1935, c.157 is considered to have been formed under this chapter and is subject to its requirements and not the requirements of IC 23-7-1.1 (before its repeal August 1, 1991) or IC 23-17.

(b) A local cooperative telephone corporation described in subsection (a) shall amend its articles of incorporation in accordance with IC 23-7-1.1 (before its repeal August 1, 1991) or IC 23-17 to conform to the requirements of this chapter and shall submit a copy of its amended articles to the commission for approval. After examining the articles, the commission shall approve the amended articles if they conform to the requirements of this chapter. The commission may approve the amended articles without conducting a hearing. The secretary of state may not issue a certificate of amendment before the commission approves the amended articles under this subsection.

(c) The certificate of public convenience and necessity or certificate of territorial authority previously issued to a local cooperative telephone corporation described in subsection (a) shall serve as the certificate required under section 6 of this chapter **(before its repeal July 1, 2009).**

(d) Subsection (a) applies to a local telephone cooperative corporation as of the date the secretary of state issues a certificate of amendment under IC 23-7-1.1-26 (before its repeal August 1, 1991) or IC 23-17-17.

(e) The local cooperative telephone corporation shall record the amended articles of incorporation in the county where the local cooperative telephone corporation has its principal office.

SECTION 41. IC 8-1-17-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 3. As used in this chapter, the following terms have the following meanings unless a different meaning clearly appears from the context:

- (1) "Acquire" means to obtain by construction, purchase, lease, devise, gift, eminent domain, or by any other lawful means.
- (2) "Board" means the board of directors of a cooperative

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corporation.

(3) "Cooperative corporation" means a corporation formed under this chapter.

**(4) "Facilities based local exchange carrier" has the meaning set forth in IC 8-1-32.4-5.**

~~(4)~~ (5) "General cooperative corporation" means a cooperative corporation formed to render services to local cooperative corporations.

~~(5)~~ (6) "Improve" includes construct, reconstruct, extend, enlarge, alter, better, or repair.

~~(6)~~ (7) "Local cooperative corporation" means a cooperative corporation formed to render telephone services within Indiana.

~~(7)~~ (8) "Member" includes each individual signing the articles of incorporation of a cooperative corporation and each person admitted to membership of the cooperative corporation under law or the corporation's bylaws.

~~(8)~~ (9) "Obligations" includes negotiable bonds, notes, debentures, interim certificates or receipts, and other evidences of indebtedness, either issued or the payment of which is assumed by a cooperative corporation.

~~(9)~~ (10) "Person" or "inhabitant" includes an individual, a firm, an association, a corporation, a limited liability company, a business trust, and a partnership.

~~(10)~~ (11) "Service" or "services", when not accompanied by the word "telephone", means construction, engineering, financial, accounting, or educational services incidental to telephone service.

~~(11)~~ (12) "System" includes any plant, works, system, facilities, or properties, together with all parts of and appurtenances to the plant, works, system, facilities, or properties, used or useful in telephone service.

~~(12)~~ "Telephone company" means an individual, a firm, an association, a corporation, or a partnership owning, leasing, or operating any lines, facilities, or systems used in the furnishing of telephone service within Indiana.

(13) "Telephone facilities" includes all buildings, plants, works, structures, improvements, fixtures, apparatus, materials, supplies, machinery, tools, implements, poles, posts, crossarms, conduits, ducts, underground or overhead lines, wires, cables, exchanges, switches, desks, testboards, frames, racks, motors, generators, batteries, and other items of central office equipment, paystations, protectors, instruments, connections, and appliances, office

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furniture and equipment, work equipment, and all other property used in connection with the provision of telephone ~~service~~ and **other telecommunications services.**

(14) "Telephone service" means that refers to **telecommunications service (as defined in 47 U.S.C. 153(46))** provided by a telephone cooperative corporation. ~~whereby the transmission of intelligence between at least two (2) points through the use of electricity is the intended use.~~ The term includes all ~~telephone~~ facilities or systems used in the rendition of the service.

SECTION 42. IC 8-1-17-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 5. (a) The individuals executing the articles of incorporation of a local cooperative corporation shall be residents of the area in which the operations of the cooperative corporation are to be conducted and shall be persons desirous of using telephone service to be furnished by the cooperative corporation.

(b) The individuals executing the articles of incorporation of a general cooperative corporation shall be members or prospective members of one (1) or more local cooperative corporations which are prospective members of such general cooperative corporation.

(c) The articles shall be executed in at least six (6) originals and shall be acknowledged by the subscribers before an officer authorized by law to take acknowledgments of deeds. When so acknowledged, three (3) originals of said articles shall be submitted to the commission. At the time the articles of incorporation are filed, **a petition an application for a certificate of territorial authority under IC 8-1-32.5** shall be filed with the commission ~~which petition if the applicant will operate as a local cooperative corporation. The application~~ shall be executed by one (1) or more of the individuals executing the said articles, and shall ~~pray the commission to grant a certificate of public convenience and necessity for the organization and operation of the proposed cooperative corporation: comply with the requirements of IC 8-1-32.5-6, as applicable.~~

(d) Upon the ~~submission receipt~~ of such any articles to, and filing of such petition with, **of incorporation and application for a certificate of territorial authority**, the commission it shall set the said petition for public hearing and give notice of the time, place and purpose thereof by publication in at least one (1) newspaper printed and published in each of the counties in which the said cooperative corporation proposed to operate. The publication shall be at least ten (10) days prior to the date set for said hearing. The cost of such

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publication shall be paid by the petitioners at or before the time of such hearing. **conduct the review required under IC 8-1-32.5-8.** If it be **the applicant** is a local cooperative corporation, in addition to such published notice, the commission shall give written notice, by United States registered mail, of the time, place and purpose of such hearing, **filing of the application** to each telephone company facilities based **local exchange carrier** operating in territory contiguous to the area in which the ~~respective~~ cooperative corporation ~~proposed~~ **proposes** to render telephone service. The commission shall ~~keep maps or records~~ from which it can readily ascertain which telephone companies should receive notice as last provided; and information so available shall be used in the mailing of the aforesaid notices. **use the record maintained by the commission under IC 8-1-32.5-13 to determine which facilities based local exchange carriers are entitled to notice under this subsection.**

(e) Any interested person may appear at such hearing, either in person or by attorney, and support or oppose the prayer of said petition. **If the commission, after hearing the evidence introduced at said conducting the review required by IC 8-1-32.5-8 and any hearing shall enter a finding that the convenience and necessity of the public proposed to be served in the territory in which the operations of the cooperative corporation are proposed to be conducted either will or will not be served by the organization and operation of the proposed cooperative corporation. If such finding be in the affirmative; allowed under IC 8-1-32.5-9, determines that the applicant meets the requirements for the issuance of a certificate of territorial authority under IC 8-1-32.5-8, the commission shall:**

- (1) issue a certificate of territorial authority under IC 8-1-32.5; and**
- (2) enter an order approving the organization of such the cooperative corporation and the proposed articles of incorporation.**

**(f) If the said finding be in the negative; the commission, after conducting the review required by IC 8-1-32.5-8 and any hearing allowed under IC 8-1-32.5-9, determines that the applicant does not meet the requirements for the issuance of a certificate of territorial authority under IC 8-1-32.5-8, the commission shall: enter an order denying the approval of said articles of incorporation:**

- (1) request the applicant to provide additional information; or**
  - (2) notify the applicant of the applicant's right to:**
    - (A) appeal the commission's determination under IC 8-1-3;**
- or**

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(B) file another application at a later date, without prejudice;  
under IC 8-1-32.5-8.

~~(f)~~ (g) If the commission approves the ~~said~~ articles of incorporation as provided in under subsection (e), the cooperative corporation shall submit the following documents, along with two (2) copies of each, to the secretary of state for filing:

- (1) One (1) of the original articles of incorporation together with an attached executed by the corporation under subsection (c).
- (2) A certified copy of the order of the commission ~~shall be~~ proffered in triplicate to the secretary of state for filing in his office. After under subsection (e)(2).
- (3) A certified copy of the certificate of territorial authority issued by the commission under subsection (e)(1).

If the secretary of state finds said articles and order determines that the documents described in subdivisions (1) through (3) comply with law, ~~he~~ the secretary of state shall forthwith endorse his approval ~~thereon the documents~~ and file one (1) set of such articles and order the documents in his the secretary of state's office and deliver the other two (2) sets, ~~thereof~~, endorsed with his the secretary of state's approval, ~~endorsed thereon~~, to the incorporators. The incorporators shall record one (1) of the approved originals original or certified copies of said articles with attached certified copy of the commission's order documents in the office of the recorder of the county in which the cooperative corporation has, or is to will have, its principal office.

~~(g)~~ (h) As soon as the provisions of this section have been complied with, the proposed cooperative corporation, described in the articles of incorporation ~~so~~ recorded under subsection (g), under its designated name, ~~shall be~~ is a body corporate.

SECTION 43. IC 8-1-17-13 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 13. A cooperative corporation may do any and all acts or things necessary or convenient for carrying out the purpose for which it was formed, including the following:

- (1) To sue and be sued.
- (2) To have a seal and alter the same at pleasure.
- (3) To acquire, hold, and dispose of property, real and personal, tangible and intangible, or any interest in the property and to pay in cash or credit, and to secure and procure payment of all or any part of the purchase price on the terms and conditions as the board shall determine.
- (4) If it is a local cooperative corporation, to furnish, improve, and

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expand telephone service to its members, to governmental agencies and political subdivisions, and to other persons.

(5) If it is a local cooperative corporation, to construct, purchase, lease as lessee, or otherwise acquire, and to improve, expand, install, equip, maintain, and operate, and to sell, assign, convey, lease as lessor, mortgage, pledge, or otherwise dispose of or encumber telephone facilities or systems, lands, buildings, structures, plants and equipment, exchanges, and any other real or personal property, tangible or intangible which ~~shall be deemed~~ **is** necessary or appropriate to accomplish the purpose for which the local cooperative corporation is organized.

(6) To cease doing business and to dissolve and surrender its corporate franchise.

(7) If it is a local cooperative corporation, to construct, operate, and maintain its telephone facilities across or along any street or public highway, or over lands that are the property of this state or a political subdivision of the state. Before telephone facilities are constructed across or along a highway in the state highway system, the local cooperative corporation shall first obtain the permit of the Indiana department of transportation to do so, and the location and setting of the telephone facilities shall be approved by and subject to the supervision of the Indiana department of transportation. Before telephone facilities are constructed on or across land belonging to the state, the local cooperative corporation shall first obtain the permit of the department of state having charge of the lands to do so, and the location and setting of the telephone facilities shall be approved by and subject to the supervision of the department. The telephone facilities shall be erected and maintained so as not to interfere with the use and maintenance of the streets, highways, and lands, and no pole or appliance shall be located so as to interfere with the ingress or egress from any premises on the street or highway. Nothing in this section contained shall deprive the body having charge of the street or highway of the right to require the relocation of any pole or appliance which may affect the proper use of the street or highway for public travel, for drainage, or for the repair, construction, or reconstruction of the street or highway. The local cooperative corporation shall restore the street, highway, or lands to ~~its~~ **their** former condition or state as near as may be and shall not use the same in a manner to impair unnecessarily ~~its~~ **their** usefulness or to injure the property of others.

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(8) To accept gifts or grants of property, real or personal, from any person, municipality, or federal agency and to accept voluntary and uncompensated services.

(9) If it is a local cooperative corporation, to connect and interconnect its telephone facilities or systems with other telephone facilities or systems. A connection or interconnection shall be in a manner and according to specifications as will avoid interference with or hazards to existing telephone facilities or systems.

(10) To issue membership certificates.

(11) To borrow money and otherwise contract indebtedness, and to issue or guarantee notes, bonds, and other evidences of indebtedness and to secure the payment thereof by mortgage, pledge, or deed of trust of, or any other encumbrance upon, any or all of its then owned or after-acquired real or personal property, assets, franchises, or revenues.

(12) To make any and all contracts necessary or convenient for the full exercise of the powers in this chapter granted, including, without limiting the generality of the foregoing, contracts with any person, federal agency, municipality, or other corporation for the interconnection of telephone service; for the management and conduct of the business of the cooperative corporation; **and** for the fixing of the rates, fees, or charges for service rendered or to be rendered by the local cooperative corporation. ~~subject to the approval of the commission as to all rates, fees, or charges for telephone service in the same manner and to the same extent as is provided by law for the regulation of rates, fees, or charges of telephone companies.~~

(13) To levy and collect reasonable fees, rents, tolls, and other charges for telephone service rendered. ~~subject to the approval of the commission as provided in this section.~~

(14) If it is a local cooperative corporation, to exercise the right of eminent domain in the manner provided by law for the exercise thereof by ~~telephone companies.~~ **communications service providers (as defined in IC 8-1-2.6-13(b)).**

(15) To adopt, amend, and repeal bylaws.

(16) If it is a local cooperative corporation, to become a member of a general cooperative corporation and if it is a general cooperative corporation, to have local cooperative corporations as its members.

(17) To recover, after a period of two (2) years, any unclaimed stocks, dividends, capital credits, patronage refunds, utility

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deposits, membership fees, account balances, or book equities for which the owner cannot be found and are the result of distributable savings of the corporation returned to the members on a pro rata basis pursuant to section 20 of this chapter.

SECTION 44. IC 8-1-17-14 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 14. ~~No~~ A local cooperative corporation may **not** sell, lease, exchange, mortgage, pledge, or otherwise sell all, or substantially all, of its property unless the ~~same shall be~~ **transaction is** authorized by a resolution duly adopted at a meeting of ~~its~~ **the corporation's** members duly called and held as provided in section 9 of this chapter. ~~which~~ **The** resolution ~~shall have received~~ **must receive** the affirmative vote of at least three-fourths (3/4) of ~~its~~ **the corporation's** members who are present at ~~such~~ **the** meeting and the affirmative vote of at least three-fourths (3/4) of ~~its~~ **the corporation's** directors who are present at a meeting of ~~its~~ **the** board of directors duly called and held as provided in ~~its~~ **the** corporation's bylaws. ~~and subject to the approval of the commission as provided by law applicable to a similar transaction by a public utility.~~

SECTION 45. IC 8-1-17-15 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 15. (a) ~~Subject to the approval of the commission~~ A cooperative corporation shall have power and is hereby authorized, from time to time, to issue its obligations for any corporate purpose. ~~Said~~ **The** obligations may be authorized by resolution or resolutions of the board, and may bear such date or dates, mature at such time or times, not exceeding forty (40) years from their respective dates, bear interest at any rate, payable semi-annually, be in such denominations, be in such form, either coupon or registered, carry such registration privileges, be executed in such manner, be payable in such medium of payment, at such place or places, and be subject to such terms of redemption, not exceeding the principal amount ~~thereof of the obligations~~ plus accrued interest, as ~~such~~ **the board's** resolution or resolutions may provide.

(b) ~~Such~~ **The** obligations may be sold in such manner and upon such terms as the board may determine at not less than the principal amount ~~thereof of the obligations~~ plus accrued interest.

(c) Any provision of law to the contrary notwithstanding, any obligations and ~~the related~~ interest coupons, ~~appertaining thereto~~, if any, issued pursuant to this act shall possess all the qualities of negotiable instruments. ~~however~~, The commission's approval shall not be required for the issuance by a cooperative corporation of its bonds, notes, or other evidences of indebtedness. ~~which are~~

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- (1) payable in less than one (1) year from date of execution; and
- (2) in the aggregate do not exceed ten per cent (10%) of its net plant account.

SECTION 46. IC 8-1-17-18 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 18. (a) Any two (2) or more cooperative corporations created under the provisions of this chapter and operating or authorized to operate in contiguous territory may enter into an agreement for the consolidation of ~~such the~~ cooperative corporations, which agreement shall be submitted for the ~~approval~~ review of the commission in the manner provided for in section 5 of this chapter. ~~Such The~~ agreement shall set forth the terms and conditions of the consolidation, the name of the proposed consolidated cooperative corporation, the number of its directors, not less than three (3), the time of the annual election, and the names of the persons, not less than three (3), to be directors until the first annual meeting. Each ~~such~~ cooperative corporation **participating in the consolidation** shall duly call and hold a meeting of its members, as provided in section 9 of this chapter, at which the proposal of ~~such the~~ consolidation shall be presented. If at each ~~such~~ meeting, the ~~aforsaid~~ **consolidation** agreement is approved by a resolution duly adopted and receiving the affirmative vote of at least three-fourths (3/4) of the members of the ~~respective cooperative corporation~~, who attend ~~such~~ **each** meeting, the directors named in the agreement shall subscribe and acknowledge articles conforming substantially to the original articles of incorporation. ~~except that it The new~~ **articles** shall be entitled and endorsed "Articles of Consolidation of \_\_\_\_\_" (the blank space being filled in with the names of the cooperative corporations being consolidated) and ~~shall must~~ state:

- (1) the names of the cooperative corporations being consolidated;
- (2) the name of the consolidated cooperative corporation;
- (3) a statement that each consolidating cooperative corporation agrees to the consolidation;
- (4) the names and addresses of the directors of the new cooperative corporation; and
- (5) the terms and conditions of the consolidation and the mode of carrying the ~~same~~ **consolidation** into effect, including the manner in which members of the consolidating cooperative corporations may or shall become members of the new cooperative corporation.

~~and The new articles of incorporation~~ may contain any provisions not inconsistent with this chapter ~~deemed that are~~ necessary or advisable for the conduct of the business of the new cooperative corporation.

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(b) ~~If~~ **After** the commission approves the ~~said~~ articles of consolidation ~~such under section 5 of this chapter, the~~ articles of consolidation or a certified copy or copies ~~thereof of the articles~~ shall be filed, together with the attached copy of the order of the commission **under section 5(e)(2) of this chapter**, in the same place as original articles of incorporation. ~~and thereupon~~ **Upon the filings required under section 5(g) of this chapter**, the proposed consolidated cooperative corporation, under its designated name, ~~shall be and constitute is~~ a body corporate with all the powers of a cooperative corporation as originally formed under this chapter. ~~If the commission does not approve the said articles of consolidation, permission for such consolidation shall be denied by the commission.~~

SECTION 47. IC 8-1-17-19 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 19. (a) In case of a consolidation, the existence of the consolidating cooperative corporations shall cease and the articles of consolidation ~~shall be deemed to be~~ **are considered** the articles of incorporation of the new cooperative corporation.

(b) All rights, privileges, immunities, and franchises and all property, real and personal, including without limitation applications for membership, all debts due on whatever account and all other choses in action, of each of the consolidating cooperative corporations ~~shall be deemed to be~~ **are** transferred to and vested in the new cooperative corporation without further act or deed.

(c) The new cooperative corporation shall be responsible and liable for all the liabilities and obligations of each of the consolidating cooperative corporations. Any claim existing or action or proceeding pending by or against any of the consolidating cooperative corporations may be prosecuted as if the consolidation had not taken place but the new cooperative corporation may be instituted in its place.

(d) The new cooperative corporation ~~shall be authorized to may~~ operate in all the areas in which the consolidating cooperative corporations ~~shall have been were~~ authorized to operate. ~~and shall not be authorized to~~ **Before the new corporation may** operate in any other area, ~~until or unless so authorized by it shall submit to the commission:~~

- (1) ~~an application for a new certificate of public convenience and necessity issued by the commission as provided in section 6 of this chapter: territorial authority under IC 8-1-32.5; or~~
- (2) ~~a notice of change under IC 8-1-32.5-12(7), as allowed by the commission.~~

(e) ~~Neither~~ The rights of creditors ~~nor and~~ any liens upon the

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property of any ~~such consolidating~~ cooperative corporations shall **not** be impaired by ~~such consolidations~~; **the consolidation.**

SECTION 48. IC 8-1-17-20 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 20. (a) A local cooperative corporation shall be required to furnish reasonably adequate telephone services and facilities. The charge made by any local cooperative corporation for any service rendered or to be rendered, either directly or in connection ~~therewith~~, **with the service**, shall be nondiscriminatory, reasonable, and just, and every discriminatory, unjust, or unreasonable charge for telephone service is prohibited and declared unlawful. ~~A~~ Reasonable and just ~~charge~~ **charges** for telephone service within the meaning of this section ~~shall be such~~ **are those** charges ~~as shall that~~ produce sufficient revenue to pay all legal and other necessary expense incident to the operation of the local cooperative corporation's system, ~~to include, but not limited to,~~ **including** maintenance costs, operating charges, upkeep, repairs, interest charges on bonds or other obligations, to provide a sinking fund for the liquidation of bonds or other evidences of indebtedness, to provide adequate funds to be used as working capital, as well as funds for making extensions and replacements, and also for the payment of any taxes that may be assessed against ~~such the~~ cooperative corporation or its property. ~~it being the intent and purpose hereof that such Charges shall described in this section must~~ produce an income sufficient to maintain ~~such the~~ local cooperative corporation's property in sound physical and financial condition to render adequate and efficient service. Any rate too low to meet the foregoing requirements ~~shall be~~ **is** unlawful. Revenues and receipts not needed for the ~~above and foregoing~~ purposes **described in this section**, or not needed in reserves for ~~such those~~ purposes, shall be returned to the patrons on a pro rata basis according to the amounts paid by them for telephone service. ~~such returns~~ **Amounts returned under this section** shall be either in cash or in abatement of current charges for telephone service, as the board may decide.

(b) As used in ~~subsections~~ **subsection** (d), ~~and (e)~~, "financial assistance" means:

- (1) a loan or loan guarantee; or
- (2) a lien accommodation provided to secure a loan made by another lender;

including ~~but not limited to~~ loans made by the Rural Electrification Administration of the United States Department of Agriculture (REA) or by the Rural Telephone Bank.

(c) As used in subsections (d) and (e), "REA borrower" means a

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corporation created under this chapter that is the recipient of financial assistance.

(d) In determining rates under this section, ~~once the commission determines that property of an REA borrower is reasonably necessary for the provision of telephone service and has been placed in service, the commission shall approve rates to be charged by the~~ **an REA borrower must charge rates** sufficient to enable the REA borrower to:

- (1) satisfy its reasonable expenses and obligations; and
- (2) repay the full amount of any financial assistance and the interest thereon.

(e) So long as there remains any unpaid portion of any financial assistance associated with the property of an REA borrower, ~~determined under subsection (d) to be reasonably necessary and placed in service,~~ the rates of the REA borrower shall be set at a level sufficient to repay the financial assistance, regardless of ~~any change in the regulatory status of the property, including, without limitation, the full or partial retirement of the property or any other change in the status of the property. as reasonably necessary or used and useful.~~

SECTION 49. IC 8-1-17-23 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 23. (a) A cooperative corporation may amend its articles of incorporation to change its corporate name, to increase or reduce the number of its directors, or ~~to change any other provisions therein; provided, that set forth in the articles. However,~~ any change of location of the principal office ~~may~~ **shall** be effected in the manner set forth in section 24 of this chapter. ~~and further provided that no cooperative corporation shall amend its articles of incorporation to embody therein any purpose, power, or provision which would not be authorized if its original articles of incorporation, including such additional or changed purpose, power, or provision, were offered for filing at the time articles under this section are offered. Such~~ **An amendment under this section** may be accomplished by filing articles of amendment, ~~which along with any notice of change required under IC 8-1-32.5-12, with the commission. The articles of amendment~~ shall be entitled and endorsed "Articles of Amendment of \_\_\_\_\_" (the blank space being filled in with the name of the cooperative corporation) and ~~state:~~ **must include the following:**

- (1) The name of the cooperative corporation, and if it has been changed, the name under which it was originally incorporated.
- (2) The date of filing the articles of incorporation in each public office where filed.
- (3) Whether the statement of counties within which ~~its~~ **the**

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**corporation's** operations are to be conducted is to be changed, and if so ~~the~~ a new statement of ~~such~~ **the counties in which the corporation will operate.**

(4) ~~The officer executing such articles of amendment shall make and annex thereto~~ An affidavit, **signed by the officer executing the articles of amendment**, stating that the provisions of this section in respect to ~~the amendment set forth in such articles~~ were complied with.

(b) ~~Such~~ **The amended** articles shall be subscribed in the name of the cooperative corporation by the appropriate officers of the cooperative corporation, who shall make and annex an affidavit stating that they have been authorized to execute and file ~~such~~ **the amended** articles by a resolution duly adopted at a meeting of the cooperative corporation duly called and held as provided in section 9 of this chapter. If by any ~~such~~ amendment to ~~the~~ articles of incorporation, the territory proposed to be served by the cooperative corporation is to be increased or decreased, ~~the articles of amendment, together with a petition executed by the appropriate officers of the cooperative corporation and praying for the permission of the commission shall be submitted~~ **submit** to the commission: ~~Thereupon,~~

(1) **an application for a new certificate of territorial authority under IC 8-1-32.5-6; or**

(2) **a notice of change under IC 8-1-32.5-12(7), as allowed by the commission.**

(c) **Upon receipt of an application or a notice of change under subsection (b),** the commission shall ~~set said petition for public hearing and shall give notice of the time and place thereof one (1) time in at least one (1) newspaper published in each of the counties in which lies any of the territory proposed to be added or omitted by such amendment; which publication shall be at least ten (10) days before such hearing. The cost of publication shall be paid by the petitioner when filing such petition. Also conduct the review required under IC 8-1-32.5-8. If the applicant is a local cooperative corporation, the commission shall give written notice of the time and place of such hearing shall be mailed~~ **proposed change in the corporation's territory to each telephone company facilities based local exchange carrier operating in contiguous territory in the manner provided in section 5 of this chapter. Any interested person may appear, personally or by attorney, at such hearing and aid or oppose the prayer of the petition. After such hearing, the commission shall grant or deny the petition and make its order accordingly. No** ~~If the commission, after conducting the review required by IC 8-1-32.5-8 and any hearing~~

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allowed under IC 8-1-32.5-9, determines that the amended articles and the application or notice of change under IC 8-1-32.5 are accurate, complete, and properly verified, the commission shall:

- (1) issue a new or amended certificate under IC 8-1-32.5 that reflects the increase or decrease in the territory served by the corporation; and
- (2) enter an order approving the amended articles of the cooperative corporation.

(d) If the commission, after conducting the review required by IC 8-1-32.5-8 and any hearing allowed under IC 8-1-32.5-9, determines that the amended articles or an application or notice of change under IC 8-1-32.5 are inaccurate, incomplete, or not properly verified, the commission shall:

- (1) request the corporation to provide additional information; or
- (2) notify the corporation of the corporation's right to:
  - (A) appeal the commission's determination under IC 8-1-3; or
  - (B) file the amended articles or an application or notice of change under IC 8-1-32.5 at a later date, without prejudice;

under IC 8-1-32.5-8.

(e) An amendment increasing or decreasing the territory to be served by ~~such~~ a cooperative corporation shall **not** be filed in the office of the secretary of state or of any county recorder unless there ~~be~~ is attached ~~thereto~~ **to the amendment** a certified copy of an order of the commission ~~consenting to such increase or decrease. Such~~ **under subsection (c)(2). The amended** articles shall be filed in the same places as the original articles of incorporation and ~~thereupon~~ **upon filing** the amendment shall be ~~deemed considered~~ to have been effected.

SECTION 50. IC 8-1-17-24 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 24. A cooperative corporation formed ~~hereunder~~ **under this chapter** may change the location of its principal office by filing in the office of the secretary of state a certificate reciting ~~such~~ **the** change of principal office and setting forth the resolution by its board of directors authorizing ~~such~~ **the** change and stating the time and place of its adoption. ~~which~~ **The** certificate shall be executed and acknowledged by the appropriate officers of the cooperative corporation with the corporate seal attached and attested by the appropriate officer of the cooperative corporation. **The cooperative corporation shall also notify the commission of the**

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**change as required under IC 8-1-32.5-12(3).**

SECTION 51. IC 8-1-17-25 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 25. **(a)** Any cooperative corporation may dissolve by filing in the office of the secretary of state articles of dissolution ~~which shall be~~ entitled and endorsed "Articles of Dissolution of \_\_\_\_\_" (the blank space being filled in with the name of the cooperative corporation). ~~and The articles of dissolution shall state the following:~~

(1) The name of the cooperative corporation, and if ~~such the~~ cooperative corporation is a corporation resulting from ~~the~~ a consolidation as provided in this chapter, the names of the original cooperative corporations.

(2) The date of filing of the articles of incorporation in the office of secretary of state and, if ~~such the~~ cooperative corporation is a corporation resulting from a consolidation as provided in this chapter, the dates on which the articles of incorporation of the original cooperative corporations were filed in the office of secretary of state.

(3) That the cooperative corporation elects to dissolve.

(4) The name and post office address of each of its directors, and the name, title, and post office address of each of its officers.

~~Such~~ **The** articles shall be subscribed and acknowledged by the appropriate officers of the cooperative corporation who shall make and annex an affidavit stating that they have been authorized to execute and file ~~such the~~ articles by a resolution duly adopted by the members of the cooperative corporation at a meeting ~~thereof~~ duly called and held as provided in section 9 of this chapter. Articles of dissolution or a certified copy or copies ~~thereof of the articles~~ shall be filed in the same places as original articles of incorporation. ~~and thereupon~~ **If the dissolving corporation is a local cooperative corporation, any certificate of territorial authority issued under IC 8-1-32.5 shall be relinquished, and the appropriate officers of the corporation shall notify the commission of the relinquishment under IC 8-1-32.5-12(5).**

**(b)** Upon the filings required by subsection (a), the cooperative corporation ~~shall be deemed to be~~ is dissolved. ~~Such~~ **However,** the cooperative corporation shall continue for the purpose of paying, satisfying, and discharging any existing liabilities or obligations and collecting or liquidating its assets, and doing all other acts required to adjust and wind up its business affairs, and may sue and be sued in its corporate name. Any assets remaining after all liabilities and obligations of the cooperative corporation have been satisfied and

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discharged shall be refunded pro rata to the patrons, their assignees, personal representatives, heirs, or legatees, who ~~shall~~ have paid for telephone service rendered by the cooperative corporation within ~~a the~~ five (5) year period ~~next immediately~~ preceding ~~such the~~ dissolution. Any assets not ~~so~~ refunded within ~~a the~~ two (2) year period after ~~such the~~ dissolution is completed shall pass to and become the property of the state. ~~of Indiana.~~

SECTION 52. IC 8-1-17-26 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 26. **(a)** Any foreign corporation organized as a nonprofit corporation for the purpose of making telephone service available to the inhabitants of rural areas may be admitted to do business ~~within this state in Indiana~~ and shall have the same powers, restrictions, and liabilities as a cooperative corporation organized under this chapter. Whenever ~~such a~~ foreign corporation desires to be admitted to operate in ~~this state; Indiana,~~ it shall file with the commission ~~a petition in as many original counterparts as there are counties in Indiana, in which it requests permission to make telephone service available, plus five (5): Said petition shall describe the territory in Indiana in which its operations are to be conducted and pray the commission to grant to it a certificate of public convenience and necessity for such operations. To each such original petition, there an application for a certificate of territorial authority under IC 8-1-32.5. The appropriate officers of the corporation shall be attached~~ **attach to the application** a copy of the articles of incorporation of ~~said the~~ foreign corporation, ~~with and all amendments thereto, to the articles,~~ duly authenticated by the proper officer of the state ~~wherein it in which the corporation is incorporated. Upon the filing of such petition with the commission, receipt of the application and the articles of incorporation,~~ the commission shall ~~set the said petition for public hearing, and shall give notice of the time and place of such hearing by publication one (1) time in at least one (1) newspaper printed and published in each of the counties in which the said foreign corporation proposes to carry on its operations; which publication shall be had at least ten (10) days prior to the date set for such hearing; the cost of such publications to be paid by the petitioners at the time of filing said petition. Also conduct the review required under IC 8-1-32.5-8. The commission shall give written notice of the time and place of such hearing shall be mailed the filing of the application to each telephone company facilities based local exchange carrier operating in contiguous territory in the manner provided in section 5 of this chapter. Any interested person may appear at such hearing, either in person or by attorney, and support or oppose~~

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the prayer of said petition. The commission shall enter a finding that the convenience and necessity of the public proposed to be served in the Indiana territory in which the operations of the foreign corporation are proposed to be conducted either will or will not be served by such operations. If said finding be in the negative, the commission shall enter an order denying the petition. If such finding be in the affirmative;

(b) If the commission, after conducting the review required by IC 8-1-32.5-8 and any hearing allowed under IC 8-1-32.5-9, determines that the foreign corporation meets the requirements for the issuance of a certificate of territorial authority under IC 8-1-32.5, the commission shall enter an order granting a certificate of public convenience and necessity territorial authority under IC 8-1-32.5 for the proposed operations of said the foreign corporation in Indiana and shall attach a copy of said the order, duly certified by the secretary of the commission, to each of the originals of said petition; filed as aforesaid; except two (2); original application filed with the commission and deliver the same applications and orders to the petitioner.

(c) If the commission, after conducting the review required by IC 8-1-32.5-8 and any hearing allowed under IC 8-1-32.5-9, determines that the foreign corporation does not meet the requirements for the issuance of a certificate of territorial authority under IC 8-1-32.5, the commission shall:

- (1) request the foreign corporation to provide additional information; or
- (2) notify the foreign corporation of the foreign corporation's right to:
  - (A) appeal the commission's determination under IC 8-1-3; or
  - (B) file another application at a later date, without prejudice;

under IC 8-1-32.5-8.

(d) If the commission issues a certificate of territorial authority under subsection (b), the foreign corporation shall then present to the secretary of state of Indiana all such sets of authenticated copy copies of its articles of incorporation, the original petitions, applications under IC 8-1-32.5, and the order of the commission under subsection (b), together with such any application for admission to do business in this state; if any, as Indiana that the secretary of state may require, and shall tender to the said secretary of state six dollars and fifty cents (\$6.50) to cover his the secretary of state's fees for filing; certificate

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~~and seal under this subsection.~~ If the secretary of state ~~shall approve~~ **approves** the same, ~~he documents submitted, the secretary of state~~ shall endorse ~~his the secretary of state's~~ approval upon each of the ~~aforesaid sets of documents, file one (1) thereof copy in his the~~ **secretary of state's** office, return the remaining ~~ones copies~~ to the foreign corporation, and issue to it ~~his the foreign corporation a~~ certificate of admission to do business in ~~this state. Thereupon, and~~ **Indiana.** Before the foreign corporation ~~shall may~~ do any business in ~~this state, Indiana,~~ it shall file in the office of the recorder of each county in Indiana in which it ~~is to will~~ make telephone service available one (1) ~~of said sets set of the~~ documents bearing the approval of the secretary of state ~~endorsed thereon. under this subsection.~~

SECTION 53. IC 8-1-29.5 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]:

**Chapter 29.5. Enforcement Remedies for Prohibited Actions by Telecommunications Service Providers and Video Service Providers**

**Sec. 1.** This chapter applies to a provider and a certificate holder.

**Sec. 2.** Except as otherwise provided, the definitions in IC 8-1-2.6 apply throughout this chapter.

**Sec. 3.** As used in this chapter, "certificate holder" refers to a person holding a certificate of franchise authority issued under IC 8-1-34-17.

**Sec. 4.** As used in this chapter, "commission" refers to the Indiana utility regulatory commission created by IC 8-1-1-2.

**Sec. 5.** As used in this chapter, "customer", with respect to a provider, refers to either of the following:

- (1) A residential customer.
- (2) A business customer.

**Sec. 6. (a)** If:

- (1) ten (10) or more customers of a provider or a certificate holder;
- (2) the utility consumer counselor; or
- (3) any class satisfying the standing requirements of IC 8-1-2-54;

files a verified complaint with the commission alleging that a service over which the commission has jurisdiction that is provided by a provider or a certificate holder is unsafe, unjustly discriminatory, or inadequate, or that any service cannot be obtained, the commission may investigate the complaint as the

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commission considers appropriate. The commission shall conduct an investigation under this section on an expedited basis.

(b) If, after notice and an opportunity for hearing, the commission determines from an investigation conducted under subsection (a) that a service over which the commission has jurisdiction that is provided by a provider or a certificate holder is unsafe, unjustly discriminatory, or inadequate, or that any service cannot be obtained, the commission may do any of the following:

(1) Issue an order directing the provider or the certificate holder to cease and desist from any action resulting in unsafe, unjustly discriminatory, or inadequate service.

(2) Mandate corrective action.

(3) Revoke or modify the terms of:

(A) an indeterminate permit;

(B) a certificate of territorial authority;

(C) a certificate of franchise authority issued under IC 8-1-34; or

(D) another license or authorization;

issued to the provider or the certificate holder by the commission.

(4) Impose a civil penalty of not more than ten thousand dollars (\$10,000) per offense, if the offense involves any of the following:

(A) A willful disregard, as evidenced by a continuing pattern of conduct, by the provider or the certificate holder of its obligation to remedy the offense after the provider or the certificate holder becomes aware of the offense.

(B) Repeated errors in bills issued to one (1) or more customer classes, if the errors:

(i) represent intentional misconduct or an act of fraud by the provider or the certificate holder or by any officer, accountant, or agent of the provider or the certificate holder; or

(ii) demonstrate, by a continuing pattern of conduct, a willful disregard by the provider or the certificate holder of its obligation to remedy the errors after the provider or the certificate holder becomes aware of the errors.

Subject to section 7(a)(1) of this chapter, for purposes of this subdivision, a single act, omission, occurrence, or event that results in multiple complaints being filed under subsection (a)

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constitutes a single offense and is not subject to more than one (1) civil penalty. The commission may not consider each day that a particular act, omission, occurrence, or event continues to be a separate offense.

(c) A matter resolved through voluntary mediation is not subject to any of the remedies allowed under subsection (b).

(d) A provider or a certificate holder may not be subject to both:

- (1) a civil penalty or order of the commission under this section; and
- (2) a penalty or remedy agreed to in a commission approved settlement agreement;

for the same offense. If the commission has approved a settlement agreement under IC 8-1-2.6 that includes penalties or remedies for noncompliance with specific provisions of the settlement agreement, the penalties or remedies provided in this section do not apply to those instances of noncompliance during the life of the settlement agreement.

(e) The attorney general may bring an action in the name of the state to enforce any action taken by the commission under subsection (b), including the collection of an unpaid civil penalty imposed by the commission.

(f) The following are subject to appeal by a provider under IC 8-1-3:

- (1) A determination by the commission under this section that a service is unsafe, unjustly discriminatory, or inadequate, or that a service cannot be obtained.
- (2) The appropriateness of any action taken by the commission under subsection (b)(1) through (b)(3).
- (3) The appropriateness of:
  - (A) the imposition of a civil penalty by the commission under subsection (b)(4); or
  - (B) the amount of the penalty imposed.

Upon the motion of a provider or a certificate holder, the commission shall stay the effect or enforceability of an order or penalty under this section pending an appeal, subject to the provider or the certificate holder posting a bond that complies with Rule 18 of the Indiana Rules of Appellate Procedure.

Sec. 7. (a) In imposing a civil penalty under section 6(b)(4) of this chapter, the commission may consider the following factors:

- (1) The duration and gravity of the offense, including the number of customers affected.

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(2) Economic benefits accrued by the provider or certificate holder as a result of the offense.

(3) The amount of a civil penalty that will deter future offenses by the provider or certificate holder.

(4) The market share of the provider or certificate holder in the affected service areas.

(5) Good faith of the provider or certificate holder in attempting to remedy the offense after receiving notification of the offense.

(b) If the commission waives a civil penalty for any offense described in section 6(b)(4) of this chapter, the commission must make a written finding as to why it is waiving the civil penalty. The commission may waive a civil penalty under section 6(b)(4) of this chapter if the commission finds that the offense is the result of any of the following:

(1) Technological infeasibility.

(2) An act of God.

(3) A defect in, or prohibited use of, customer provided equipment.

(4) A negligent act of a customer.

(5) An emergency situation.

(6) Unavoidable casualty.

(c) The secretary of the commission shall direct a civil penalty imposed and collected under section 6(b)(4) of this chapter as follows:

(1) A civil penalty imposed for an offense that directly affects retail customers must be refunded directly to the customers of the provider or certificate holder in the form of credits on customer bills.

(2) A civil penalty imposed for an offense not described in subdivision (1) must be deposited into an account designated by the Indiana finance authority for use by the authority in making loans or grants to broadband developers and operators under the Indiana broadband development program established by IC 8-1-33-15.

SECTION 54. IC 8-1-32.4 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

**Chapter 32.4. Telecommunications Providers of Last Resort**

**Sec. 1.** Except as otherwise provided, the definitions in IC 8-1-2.6 apply throughout this chapter.

**Sec. 2.** As used in this chapter, "approved alternative

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technology" refers to any technology that:

- (1) offers service and functionality comparable to that provided through an exiting provider's facilities, as determined by the commission;
- (2) may include a technology that does not require the use of any public right-of-way; and
- (3) is approved by the commission for deployment in a particular service area.

Sec. 3. As used in this chapter, "basic telecommunications service" has the meaning set forth in IC 8-1-2.6-0.1.

Sec. 4. As used in this chapter, "exiting provider" means a provider that:

- (1) holds a certificate of territorial authority issued by the commission;
- (2) is the predominant local exchange carrier in a defined geographic area and provides telecommunications service using the provider's own facilities; and
- (3) ceases operation in all or part of the service area covered by the certificate of territorial authority.

Sec. 5. As used in this chapter, "facilities based local exchange carrier" means a local exchange carrier that provides local exchange service:

- (1) exclusively over facilities owned or leased by the carrier; or
- (2) predominantly over facilities owned or leased by the carrier, in combination with the resale of the telecommunications service (as defined in 47 U.S.C. 153(46)) of another carrier.

Sec. 6. As used in this chapter, "incumbent local exchange carrier" has the meaning set forth in 47 U.S.C. 251(h).

Sec. 7. As used in this chapter, "local exchange carrier" has the meaning set forth in 47 U.S.C. 153(26).

Sec. 8. As used in this chapter, "local exchange service" means the provision of telephone exchange service (as defined in 47 U.S.C. 153(47)) or exchange access (as defined in 47 U.S.C. 153(16)).

Sec. 9. As used in this chapter, "provider of last resort" means a provider that:

- (1) holds a certificate of territorial authority issued by the commission; and
- (2) is required to offer local exchange service throughout a defined geographic area.

Sec. 10. As used in this chapter, "successor provider" means a

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provider that:

- (1) holds a certificate of territorial authority issued by the commission; and
- (2) is, or is designated to become, the provider of last resort for a defined geographic area previously served by an exiting provider.

**Sec. 11.** Except as provided in:

- (1) IC 8-1-32.6-8;
- (2) section 13 of this chapter; or
- (3) section 16 of this chapter;

an incumbent local exchange carrier has the obligations of the provider of last resort. An incumbent local exchange carrier may meet the carrier's obligations under this section using any available technology.

**Sec. 12.** (a) This section applies to a provider that holds a certificate of territorial authority to provide local exchange service in Indiana. If a provider:

- (1) decides to cease serving all or part of the provider's defined service area; or
- (2) plans to file for bankruptcy;

the provider shall provide at least sixty (60) days advance notice to the commission and each affected customer and wholesale provider.

(b) A notice described in subsection (a) must:

- (1) be submitted in the form and manner prescribed by the commission; and
- (2) include at least one (1) toll free customer service telephone number maintained by the provider to facilitate the continuation of service and the transition of customers to other providers.

(c) The exiting provider is liable for all charges owed to other providers and is responsible for any provider change charges.

**Sec. 13.** (a) If the holder of a certificate of territorial authority to provide local exchange service installs facilities to provide telecommunications service, including local exchange service, in a defined geographic area and:

- (1) the holder is not the designated provider of last resort for the area; and
- (2) the designated provider of last resort for the area has not installed facilities to serve customers in the area;

the designated provider of last resort may petition the commission for an order relieving the designated provider of its obligations as

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the provider of last resort in the area.

(b) The commission shall relieve the petitioning provider from its obligations as the provider of last resort for the area described in subsection (a) and shall designate the holder making the installation under subsection (a) as the provider of last resort for the area if the commission determines that:

- (1) the petitioning provider does not have facilities in place to provide local exchange service to all customers in the area; and
- (2) the holder making the installation under subsection (a) has installed facilities adequate to provide local exchange service throughout the area.

The commission shall make the determinations required by this subsection not later than sixty (60) days after the date the petition is filed with the commission under subsection (a).

Sec. 14. (a) Except as provided in IC 8-1-32.6-8 or section 16 of this chapter, if:

- (1) the commission receives notice of an exiting provider's decision to cease operation in all or part of the service area covered by the provider's certificate of territorial authority; and
- (2) there is not another provider that:
  - (A) holds a certificate of territorial authority in the area; and
  - (B) has facilities sufficient to provide basic telecommunications service in the area;

the commission shall conduct a formal proceeding to determine the successor provider for the area.

(b) After determining the successor provider for the affected area under subsection (a), the commission shall, if applicable, allow the following with respect to the successor provider:

- (1) A reasonable time, determined by the commission and in accordance with industry practices, in which to:
  - (A) modify, construct, or obtain the facilities; or
  - (B) deploy an approved alternative technology; necessary to serve the customers of the exiting provider.
- (2) A temporary exemption from any lawful obligation to unbundle the successor provider's network elements. The exemption under this subdivision shall continue for a period determined by the commission to be reasonably necessary to allow the successor provider to:
  - (A) modify, construct, or obtain the facilities; or

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(B) deploy an alternative technology;  
that will allow the successor provider to serve the customers of the exiting provider.

(3) A temporary exemption from any lawful obligation to provide telecommunications service for resale within the affected area. The exemption under this subdivision shall continue for a period determined by the commission to be reasonably necessary to allow the successor provider to:

(A) modify, construct, or obtain the facilities; or

(B) deploy an alternative technology;  
that will allow the successor provider to serve the customers of the exiting provider.

(c) The successor provider is entitled to obtain funding from a state universal service fund to support the provider's assumption of obligations as the provider of last resort for the area. This section does not prohibit a provider from voluntarily:

(1) serving customers in the affected area; or

(2) purchasing the facilities of the exiting provider.

(d) A customer within the defined geographic area to be served by the successor provider is considered to have applied for basic telecommunications service from the successor provider on the effective date of the commission's designation of the successor provider. Each right, privilege, and obligation applicable to customers of the successor provider applies to a customer transferred to the successor provider under this section. A customer transferred to the successor provider under this section is subject to the successor provider's terms of service as specified in an applicable tariff or contract. This section does not prohibit a customer from seeking, at any time, service from a provider other than the successor provider.

Sec. 15. (a) The commission may, on its own motion or on the petition of an interested party, institute an expedited proceeding under this section if the commission determines that:

(1) a facilities based local exchange carrier has a certificate of territorial authority to provide local exchange service in a defined geographic area;

(2) there is not another provider that:

(A) holds a certificate of territorial authority in the area;  
and

(B) has facilities sufficient to provide local exchange service in the area; and

(3) the facilities based local exchange carrier has:

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(A) ceased providing local exchange service to the customers in the area; or

(B) abandoned the operation of the carrier's facilities in the area that are used to provide local exchange service.

(b) In a proceeding under this section, the commission may declare in accordance with IC 8-1-2-113 that an emergency exists and issue any order necessary to protect the health, safety, and welfare of affected customers and to expedite the restoration or continuation of local exchange service to the affected customers. An order issued under this subsection may:

(1) provide for the temporary operation of the facilities based local exchange carrier's facilities by any provider, including a provider that has not been issued a certificate of territorial authority by the commission;

(2) authorize one (1) or more third parties to enter the premises of any abandoned facilities; or

(3) grant temporary waivers from quality of service requirements for any provider:

(A) providing service under subdivision (1); or

(B) designated as a successor provider by the commission under subsection (c).

(c) Except as provided in IC 8-1-32.6-8 or section 16 of this chapter, the commission may act under section 14 of this chapter to designate a successor provider in any proceeding under this section.

Sec. 16. (a) If a provider, other than the incumbent local exchange carrier, operates under an arrangement by which the provider is the exclusive provider of basic telecommunications service in a particular geographic area, building, or group of residences and businesses, the incumbent local exchange carrier is relieved of any provider of last resort obligations that the incumbent local exchange carrier would ordinarily have with respect to the particular geographic area, building, or group of residences and buildings.

(b) If:

(1) a provider with an exclusive service arrangement described in subsection (a) decides to cease operations in all or part of the particular geographic area, building, or group of residences and buildings that the provider serves under the arrangement; and

(2) the incumbent local exchange carrier:

(A) has insufficient facilities to serve the affected

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customers of the exiting provider; and

(B) elects to purchase the facilities of the exiting provider; the incumbent local exchange carrier has twelve (12) months to make any modifications necessary to the purchased facilities to allow the incumbent local exchange carrier to serve the affected customers of the exiting provider. The incumbent local exchange carrier may apply to the commission for an extension of the period allowed under this subsection, and the commission shall grant the extension upon good cause shown by the incumbent local exchange carrier.

(c) If:

(1) a provider with an exclusive service arrangement described in subsection (a) decides to cease operations in all or part of the particular geographic area, building, or group of residences and buildings that the provider serves under the arrangement; and

(2) the incumbent local exchange carrier:

(A) has insufficient facilities to serve the affected customers of the exiting provider; and

(B) elects not to purchase the facilities of the exiting provider;

the incumbent local exchange carrier has twelve (12) months to deploy an approved alternative technology necessary to allow the incumbent local exchange carrier to serve the affected customers of the exiting provider. The incumbent local exchange carrier may apply to the commission for an extension of the period allowed under this subsection, and the commission shall grant the extension upon good cause shown by the incumbent local exchange carrier.

SECTION 55. IC 8-1-32.5 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

**Chapter 32.5. Certificates of Territorial Authority for Communications Service Providers**

**Sec. 1.** This chapter applies to a communications service provider that seeks to offer communications service to Indiana customers after June 30, 2009.

**Sec. 2.** As used in this chapter, "commission" refers to the Indiana utility regulatory commission created by IC 8-1-1-2.

**Sec. 3. (a)** As used in this chapter, "communications service" refers to any of the following:

(1) Telecommunications service (as defined in 47 U.S.C. 153(46)).

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(2) Information service (as defined in 47 U.S.C. 153(20)).

(b) The term includes:

- (1) video service (as defined in IC 8-1-34-14);
- (2) broadband service;
- (3) advanced services (as defined in 47 CFR 51.5); and
- (4) Internet Protocol enabled services;

however classified by the Federal Communications Commission.

Sec. 4. As used in this chapter, "communications service provider" means a person or an entity that offers communications service to customers in Indiana, without regard to the technology or medium used by the person or entity to provide the communications service. The term includes a provider of commercial mobile service (as defined in 47 U.S.C. 332).

Sec. 5. As used in this chapter, "facilities based local exchange carrier" means a local exchange carrier (as defined in 47 U.S.C. 153(26)) that provides telephone exchange service (as defined in 47 U.S.C. 153(47)) or exchange access (as defined in 47 U.S.C. 153(16)):

- (1) exclusively over facilities owned or leased by the carrier; or
- (2) predominantly over facilities owned or leased by the carrier, in combination with the resale of the telecommunications service (as defined in 47 U.S.C. 153(46)) of another carrier.

Sec. 6. (a) Except as provided in subsection (c), before a communications service provider may offer communications service to customers in Indiana, the communications service provider must apply to the commission for a certificate of territorial authority. A communications service provider that seeks a certificate under this chapter shall submit an application on a form prescribed by the commission. The form prescribed by the commission must require the communications service provider to report the following information:

- (1) The provider's legal name and any name under which the provider does or will do business in Indiana, as authorized by the secretary of state.
- (2) The provider's address and telephone number, along with contact information for the person responsible for ongoing communications with the commission.
- (3) The legal name, address, and telephone number of the provider's parent company, if any.
- (4) A description of each service area in Indiana in which the

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provider proposes to offer communications service.

(5) For each service area identified under subdivision (4), a description of each type of communications service that the provider proposes to offer in the service area.

(6) For each communications service identified under subdivision (5), whether the communications service will be offered to residential customers or business customers, or both.

(7) The expected date of deployment for each communications service identified under subdivision (5) in each service area identified in subdivision (4).

(8) A list of other states in which the provider offers communications service, including the type of communications service offered.

(9) Any other information the commission considers necessary to:

(A) monitor the type and availability of communications service provided to Indiana customers; and

(B) prepare the commission's annual report to the regulatory flexibility committee under IC 8-1-2.6-4.

The commission may charge a fee for filing an application under this section. Any fee charged by the commission under this subsection may not exceed the commission's actual costs to process and review the application under section 8 of this chapter.

(b) A communications service provider shall also submit, along with the application required by subsection (a), the following documents:

(1) A certification from the secretary of state authorizing the provider to do business in Indiana.

(2) Information demonstrating the provider's financial, managerial, and technical ability to provide each communications service identified in the provider's application under subsection (a)(5) in each service area identified under subsection (a)(4).

(3) A statement, signed under penalty of perjury by an officer or another person authorized to bind the provider, that affirms the following:

(A) That the provider has filed or will timely file with the Federal Communications Commission all forms required by the Federal Communications Commission before offering communications service in Indiana.

(B) That the provider agrees to comply with any customer

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notification requirements imposed by the commission under section 11(c) of this chapter.

(C) That the provider agrees to update the information provided in the application submitted under subsection (a) on a regular basis, as may be required by the commission under section 12 of this chapter.

(D) That the provider agrees to notify the commission when the provider commences offering communications service in each service area identified in the provider's application under subsection (a)(4).

(E) That the provider agrees to pay any lawful rate or charge for switched and special access services, as required under any:

- (i) applicable interconnection agreement; or
- (ii) lawful tariff or order approved or issued by a regulatory body having jurisdiction.

(F) That the provider agrees to report, at the times required by the commission, any information required by the commission under IC 8-1-2.6-13(d)(9).

(c) If:

(1) a communications service provider has been issued a:

- (A) certificate of territorial authority; or
- (B) certificate of public convenience and necessity;

by the commission before July 1, 2009; and

(2) the certificate described in subdivision (1) is in effect on July 1, 2009;

the communications service provider is not required to submit an application under this section for as long as the certificate described in subdivision (1) remains in effect. For purposes of this subsection, if a corporation organized under IC 8-1-13 (or a corporation organized under IC 23-17-1 that is an electric cooperative and that has at least one (1) member that is a corporation organized under IC 8-1-13) holds a certificate of public convenience and necessity issued by the commission before, on, or after July 1, 2009, that certificate may serve as the certificate required under this chapter with respect to any communications service offered by the corporation, subject to the commission's right to require the corporation to provide any information that an applicant is otherwise required to submit under subsection (a) or that a holder is required to report under IC 8-1-2.6-13(d)(9).

(d) This section does not empower the commission to require an

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applicant for a certificate under this chapter to disclose confidential and proprietary business plans and other confidential information without adequate protection of the information. The commission shall exercise all necessary caution to avoid disclosure of confidential information supplied under this subsection.

Sec. 7. A communications service provider shall submit duplicate copies of the application and documents required by section 6 of this chapter to the commission. The commission shall prescribe the number of copies to be submitted by a communications service provider under this section.

Sec. 8. Not later than thirty (30) days after receiving the application and documents required by section 6 of this chapter, the commission shall review the application and documents for accuracy and completeness. If the commission determines that the application and documents are accurate, complete, and properly verified, the commission shall issue a certificate of territorial authority recognizing the communications service provider's authority to provide each communications service identified in the application. If the commission determines that the application and documents are inaccurate or incomplete, or are not properly verified, the commission shall return the application and documents to the provider with a brief statement of any additional information required. Not later than thirty (30) days after receipt of the request for additional information, the provider may:

- (1) provide the information requested;
- (2) appeal the decision of the commission under IC 8-1-3; or
- (3) decide to file another application at a later date, without prejudice.

Sec. 9. (a) A hearing is not required in connection with the issuance of a certificate under this chapter. However, the commission shall conduct a hearing, subject to the requirements for hearings under IC 8-1-2 for public utilities, upon the request of any of the following:

- (1) The communications service provider submitting the application.
  - (2) Any facilities based local exchange carrier offering service in a service area identified in the provider's application under section 6(a)(4) of this chapter.
  - (3) The office of utility consumer counselor created by IC 8-1-1.1-2.
  - (4) The commission, on its own motion.
- (b) A hearing conducted under this section shall be limited to

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consideration of one (1) or more of the following issues:

(1) Whether the application and documents submitted under section 6 of this chapter are accurate, complete, and properly verified.

(2) The communications service provider's financial, managerial, and technical ability to provide the communications service for which it seeks a certificate under this chapter.

(c) The commission may not require a:

(1) communications service provider; or

(2) facilities based local exchange carrier offering service in a service area identified in the provider's application under section 6(a)(4) of this chapter;

to be represented by counsel at a hearing under this section.

Sec. 10. Subject to any notice requirements adopted by the commission under section 12 of this chapter, a certificate issued under this chapter may be:

(1) sold, assigned, leased, or transferred by the holder to any communications service provider to which a certificate of territorial authority may be lawfully issued under this chapter; or

(2) included in the property and rights encumbered under any indenture of mortgage or deed of trust of the holder.

Sec. 11. (a) The commission may not require a communications service provider to file a tariff in connection with, or as a condition of receiving, a certificate of territorial authority under this chapter.

(b) This subsection does not apply to a provider of commercial mobile service (as defined in 47 U.S.C. 332). The commission may require, in connection with the issuance of a certificate under this chapter, the communications service provider to provide advance notice to the provider's Indiana customers if the provider will do any of the following:

(1) Increase the rates and charges for any communications service that the provider offers in any of the provider's service areas in Indiana.

(2) Offer new communications service in any of the provider's service areas in Indiana.

(3) Cease to offer any communications service that the provider offers in any of the provider's service areas in Indiana.

The commission shall prescribe any customer notification

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requirements under this subsection in a rule of general application adopted under IC 4-22-2.

**Sec. 12.** In connection with, or as a condition of receiving, a certificate of territorial authority under this chapter, the commission may require a communications service provider to notify the commission, after the issuance of a certificate, of any of the following changes involving the provider or the certificate issued:

(1) Any transaction involving a change in the ownership, operation, control, or corporate organization of the provider, including a merger, acquisition, or reorganization.

(2) A change in the provider's legal name or the adoption of, or change to, an assumed business name. The provider shall submit to the commission a certified copy of the:

(A) amended certificate of authority; or

(B) certificate of assumed business name;

issued by the secretary of state to reflect the change.

(3) A change in the provider's principal business address or in the name of the person authorized to receive notice on behalf of the provider.

(4) Any sale, assignment, lease, or transfer of the certificate to another communications service provider, as allowed by section 10 of this chapter. The provider shall identify the other communications service provider to which the sale, assignment, lease, or transfer is made.

(5) The relinquishment of any certificate issued under this chapter. The provider shall identify:

(A) any other certificate of territorial authority issued under this chapter that will be retained by the provider;

(B) the number of Indiana customers in the service area covered by the certificate being relinquished; and

(C) the method by which the provider's customers were or will be notified of the relinquishment, if required in a rule adopted by the commission under section 11(c) of this chapter.

(6) This subdivision does not apply to a provider of commercial mobile service (as defined in 47 U.S.C. 332). A change in the communications service provided in one (1) or more of service areas identified in the provider's application under section 6(a)(4) of this chapter. However, if new services will be provided in one (1) or more of the service areas, the commission may require the provider to submit a new

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application under section 6 of this chapter with respect to those services.

(7) A change in one (1) or more of the service areas identified in the provider's application under section 6(a)(4) of this chapter that would increase or decrease the territory within the service area.

The commission shall prescribe the time in which a provider must report changes under this section. The commission may prescribe a form for the reporting of changes under this section.

Sec. 13. The commission shall maintain a record of all certificates of territorial authority issued under this chapter. The record must include all application forms, notices of change under section 12 of this chapter, and other documents filed with the commission under this chapter. The record must be made available:

(1) for public inspection and copying in the office of the commission during regular business hours under IC 5-14-3; and

(2) electronically through the computer gateway administered by the office of technology established by IC 4-13.1-2-1;

to the extent the information in the record is not exempt from public disclosure under IC 5-14-3-4(a).

Sec. 14. A communications service provider that holds a certificate issued under this chapter is exempt from local franchises and related fees to the same extent as a communications service provider that holds a certificate of territorial authority or an indeterminate permit issued under IC 8-1-2 before July 1, 2009.

Sec. 15. The commission may adopt rules under IC 4-22-2 to implement this chapter.

SECTION 56. IC 8-1-32.6 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

**Chapter 32.6. Access to Real Property by Communications Service Providers**

Sec. 1. As used in this chapter, "commission" refers to the Indiana utility regulatory commission created by IC 8-1-1-2.

Sec. 2. (a) As used in this chapter, "communications service" refers to any of the following:

(1) Telecommunications service (as defined in 47 U.S.C. 153(46)).

(2) Information service (as defined in 47 U.S.C. 153(20)).

(b) The term includes:

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- (1) video service (as defined in IC 8-1-34-14);
- (2) broadband service;
- (3) advanced services (as defined in 47 CFR 51.5); and
- (4) Internet Protocol enabled services;

however classified by the Federal Communications Commission.

Sec. 3. As used in this chapter, "communications service provider" means a person or an entity, or an affiliate (as defined in IC 8-1-34-1) of a person or an entity, that offers communications service to customers in Indiana, without regard to the technology or medium used by the person or entity to provide the communications service. The term includes a provider of commercial mobile service (as defined in 47 U.S.C. 332).

Sec. 4. As used in this chapter, "multitenant real estate" means any:

- (1) geographic area;
- (2) building; or
- (3) group of buildings;

containing more than one (1) unit for business purposes. The term includes office buildings and office parks. The term does not include apartment buildings, condominiums, or subdivisions.

Sec. 5. As used in this chapter, "person" means an individual, a corporation, a limited liability company, a partnership, an unincorporated association, or a governmental entity.

Sec. 6. As used in this chapter, "provider of last resort" has the meaning set forth in IC 8-1-32.4-9.

Sec. 7. (a) After March 27, 2006, a communications service provider shall not enter into any contract, agreement, or other arrangement that does any of the following:

- (1) Requires any person to restrict or limit:
  - (A) the ability of another communications service provider to obtain easements or rights-of-way for the installation of facilities or equipment used to provide communications service to Indiana customers; or
  - (B) access to real property by another communications service provider.
- (2) Offers or grants incentives or rewards to an owner of real property if the incentives or rewards are contingent upon the property owner's agreement to restrict or limit:
  - (A) the ability of another communications service provider to obtain easements or rights-of-way for the installation of facilities or equipment used to provide communications service on the property; or

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**(B) access to the owner's real property by another communications service provider.**

**A contract, an agreement, or any other arrangement that violates this section is void if the contract, agreement, or arrangement is entered into after March 27, 2006. However, a contract, an agreement, or any other arrangement that otherwise violates this section remains in effect until such time as it would normally terminate or expire if the contract, agreement, or arrangement is entered into before March 28, 2006.**

**(b) This section does not prohibit a communications service provider and a subscriber from entering into any lawful contract, agreement, or other arrangement concerning the communications service offered by the communications service provider to the subscriber.**

**(c) Upon:**

**(1) a complaint filed by:**

**(A) another communications service provider;**

**(B) a subscriber or potential subscriber of communications service;**

**(C) the utility consumer counselor; or**

**(D) any class satisfying the standing requirements of IC 8-1-2-54; or**

**(2) the commission's own motion;**

**the commission may investigate whether a communications service provider has violated this section. If, after notice and an opportunity for hearing, the commission determines that the communications service provider has violated this section, the commission may issue an order imposing a civil penalty of not more than five hundred dollars (\$500) for each violation. For purposes of this subsection, each day that a contract, an agreement, or an arrangement prohibited by this section remains in effect constitutes a separate violation.**

**(d) The attorney general may bring an action in the name of the state to enforce an order of the commission under subsection (c), including the collection of an unpaid civil penalty imposed by the commission.**

**(e) Civil penalties collected under this section shall be deposited in the state general fund.**

**(f) A determination by the commission under this section is subject to appeal under IC 8-1-3.**

**Sec. 8. (a) Notwithstanding IC 8-1-32.4-14, the commission may not require a communications service provider, including a**

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provider of last resort, to provide any communications service to the occupants of multitenant real estate if the owner, operator, or developer of the multitenant real estate does any of the following to the benefit of another communications service provider:

(1) Permits only one (1) communications service provider to install the provider's facilities or equipment during the construction or development phase of the multitenant real estate.

(2) Accepts or agrees to accept incentives or rewards that:

(A) are offered by a communications service provider to the owner, operator, developer, or occupants of the multitenant real estate; and

(B) are contingent upon the provision of communications service by that provider to the occupants of the multitenant real estate, to the exclusion of any services provided by other communications service providers.

(3) Collects from the occupants of the multitenant real estate any charges for the provision of communications service to the occupants, including charges collected through rent, fees, or dues.

(4) Enters into an agreement with a communications service provider that is prohibited by section 7 of this chapter.

(b) This subsection applies to a communications service provider that is relieved under subsection (a) of an obligation to provide communications service to the occupants of multitenant real estate. This section does not prohibit the communications service provider from voluntarily offering service to the occupants of the multitenant real estate. However, the commission shall not exercise jurisdiction over the terms, conditions, rates, or availability of any communications service voluntarily offered by a communications service provider under this subsection.

Sec. 9. (a) Except as provided in subsection (b), the owner, operator, or developer of multitenant real estate located in a service area in which one (1) or more communications service providers are authorized to provide communications service may not do any of the following:

(1) Prevent a communications service provider from installing on the premises communications service equipment that an occupant requests.

(2) Interfere with a communications service provider's installation on the premises of communications service equipment that an occupant requests.

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**(3) Discriminate against a communications service provider or impose unduly burdensome conditions on the terms, conditions, and compensation for a communications service provider's installation of communications service equipment on the premises.**

**(4) Demand or accept an unreasonable payment from:**

**(A) an occupant; or**

**(B) a communications service provider;**

**in exchange for allowing the communications service provider access to the premises.**

**(5) Discriminate against or in favor of an occupant in any manner, including charging higher or lower rental charges to the occupant, because of the communications service provider from which the occupant receives communications service.**

**(b) This section does not prohibit the owner, operator, or developer of multitenant real estate from doing any of the following:**

**(1) Imposing a condition on a communications service provider that is reasonably necessary to protect:**

**(A) the safety, security, appearance, or condition of the property; or**

**(B) the safety and convenience of other persons.**

**(2) Imposing a reasonable limitation on the hours during which a communications service provider may have access to the premises to install communications service equipment.**

**(3) Imposing a reasonable limitation on the number of communications service providers that have access to the premises, if the owner, operator, or developer can demonstrate a space constraint that requires the limitation.**

**(4) Requiring a communications service provider to agree to indemnify the owner, operator, or developer for damage caused by installing, operating, or removing communications service equipment on or from the premises.**

**(5) Requiring an occupant or a communications service provider to bear the entire cost of installing, operating, or removing communications service equipment.**

**(6) Requiring a communications service provider to pay compensation for access to or use of the premises, as long as the compensation is:**

**(A) reasonable; and**

**(B) nondiscriminatory;**

**among communications service providers.**

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(c) For purposes of this subsection, an "affected person" includes the following:

- (1) An occupant that is a current or potential subscriber of communications service on the premises of multitenant real estate.
- (2) A unit in which multitenant real estate is located, acting on behalf of:
  - (A) a person described in subdivision (1); or
  - (B) other similarly situated persons.
- (3) A communications service provider.

An affected person that alleges a violation of this section by the owner, operator, or developer of multitenant real estate may seek equitable or compensatory relief in a court having jurisdiction. The party prevailing in any action filed under this section is entitled to recover the costs of the action, including reasonable attorney's fees as determined by the court.

**Sec. 10. The commission may adopt rules under IC 4-22-2 to implement this chapter.**

SECTION 57. IC 8-1-33-13, AS ADDED BY P.L.235-2005, SECTION 105, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 13. As used in this chapter, "underserved area" means an area within Indiana that the authority determines ~~does not have a person that:~~

- (1) provides broadband service in the area at the time of the authority's inquiry under section 14 of this chapter; or
- (2) intends to provide broadband service not later than three (3) months after the date of the authority's inquiry under section 14 of this chapter.

**is not being adequately served with broadband service.**

SECTION 58. IC 8-1-34 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

#### **Chapter 34. Video Service Franchises**

**Sec. 1.** As used in this chapter, "affiliate" has the meaning set forth in IC 23-1-43-1. The term includes a parent company or a subsidiary.

**Sec. 2.** As used in this chapter, "certificate" refers to a certificate of franchise authority issued by the commission under section 17 of this chapter.

**Sec. 3.** As used in this chapter, "commission" refers to the Indiana utility regulatory commission created by IC 8-1-1-2.

**Sec. 4.** As used in this chapter, "franchise" means an initial

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authorization, or a renewal of an authorization, that:

- (1) is issued by the commission under this chapter after June 30, 2006; and
- (2) authorizes the construction or operation of a video service system in a designated service area in Indiana.

Sec. 5. As used in this chapter, "gross revenue" means all consideration of any kind or nature, including cash, credits, property, and in kind contributions:

- (1) received by a holder from the operation of a video service system in a particular unit in Indiana; and
- (2) calculated by the holder under section 23 of this chapter.

Sec. 6. As used in this chapter, "holder" refers to a person that holds a certificate issued by the commission under this chapter after June 30, 2006.

Sec. 7. As used in this chapter, "incumbent provider" means the provider serving the largest number of video service subscribers in a particular local franchise service area on July 1, 2006.

Sec. 8. As used in this chapter, "local franchise" means an initial authorization, or a renewal of an authorization, that:

- (1) is issued by a unit before July 1, 2006; and
- (2) authorizes the construction or operation of a video service system in a designated service area in the unit.

Sec. 9. As used in this chapter, "other programming service" refers to information that a provider makes available to all subscribers generally.

Sec. 10. As used in this chapter, "person" means an individual, a corporation, a partnership, a limited liability company, an association, or another entity organized under the laws of any state.

Sec. 11. As used in this chapter, "provider" refers to a multichannel video programming distributor (as defined in 47 U.S.C. 522(13)).

Sec. 12. As used in this chapter, "unit" has the meaning set forth in IC 36-1-2-23.

Sec. 13. As used in this chapter, "video programming" has the meaning set forth in 47 U.S.C. 522(20).

Sec. 14. (a) As used in this chapter, "video service" means:

- (1) the transmission to subscribers of video programming and other programming service:
  - (A) through facilities located at least in part in a public right-of-way; and
  - (B) without regard to the technology used to deliver the

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video programming or other programming service; and  
 (2) any subscriber interaction required for the selection or use of the video programming or other programming service.

(b) The term does not include commercial mobile service (as defined in 47 U.S.C. 332).

Sec. 15. (a) As used in this chapter, "video service system" means a system, consisting of a set of transmission paths and associated signal generation, reception, and control equipment, that is designed to provide video service directly to subscribers within a community. The term includes the:

- (1) optical spectrum wavelengths;
- (2) bandwidth; or
- (3) other current or future technological capacity;

used to provide the video service.

(b) The term does not include a system that transmits video service to subscribers without using any public right-of-way.

Sec. 16. (a) Except as provided in section 21 of this chapter, after June 30, 2006:

- (1) the commission is the sole franchising authority (as defined in 47 U.S.C. 522(10)) for the provision of video service in Indiana; and
- (2) a unit may not:

- (A) require a provider to obtain a separate franchise; or
- (B) impose any fee, gross receipt tax, licensing requirement, rate regulation, or build-out requirement on a provider;

except as authorized by this chapter.

(b) Except as provided in section 21 of this chapter, a person who seeks to provide video service in Indiana after June 30, 2006, shall file with the commission an application for a franchise. The application shall be made on a form prescribed by the commission and must include the following:

- (1) A sworn affidavit, signed by an officer or another person authorized to bind the applicant, that affirms the following:
  - (A) That the applicant has filed or will timely file with the Federal Communications Commission all forms required by the Federal Communications Commission before offering video service in Indiana.
  - (B) That the applicant agrees to comply with all federal and state statutes, rules, and regulations applicable to the operation of the applicant's video service system.
  - (C) That the applicant agrees to:

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- (i) comply with any local ordinance or regulation governing the use of public rights-of-way in the delivery of video service; and
- (ii) recognize the police powers of a unit to enforce the ordinance or regulation.

(D) If the applicant will terminate an existing local franchise under section 21 of this chapter, that the applicant agrees to perform any obligations owed to any private person under the terminated franchise until such time as the local franchise would otherwise terminate or expire, as required by section 22 of this chapter.

(2) The applicant's legal name and any name under which the applicant does or will do business in Indiana, as authorized by the secretary of state.

(3) The address and telephone number of the applicant's principal place of business, along with contact information for the person responsible for ongoing communications with the commission.

(4) The names and titles of the applicant's principal officers.

(5) The legal name, address, and telephone number of the applicant's parent company, if any.

(6) A description of each service area in Indiana to be served by the applicant. A service area described under this subdivision may include an unincorporated area in Indiana.

(7) The expected date for the deployment of video service in each of the areas identified in subdivision (6).

(8) A list of other states in which the applicant provides video service.

(9) If the applicant will terminate an existing local franchise under section 21(b) of this chapter, a copy of the written notice sent to the municipality under section 21(c) of this chapter.

(10) Any other information the commission considers necessary to:

(A) monitor the provision of video service to Indiana customers; and

(B) prepare the commission's annual report to the regulatory flexibility committee under IC 8-1-2.6-4.

This subsection does not empower the commission to require an applicant to disclose confidential and proprietary business plans and other confidential information without adequate protection of the information. The commission shall exercise all necessary

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caution to avoid disclosure of confidential information supplied under this subsection.

(c) The commission may charge a fee for filing an application under this section. Any fee charged by the commission under this subsection may not exceed the commission's actual costs to process and review the application under section 17 of this chapter.

Sec. 17. (a) Not later than fifteen (15) business days after the commission receives an application under section 16 of this chapter, the commission shall determine whether the application is complete and properly verified. If the commission determines that the application is incomplete or is not properly verified, the commission shall notify the applicant of the deficiency and allow the applicant to resubmit the application after correcting the deficiency. If the commission determines that the application is complete and properly verified, the commission shall issue the applicant a certificate of franchise authority. A certificate issued under this section must contain:

- (1) a grant of authority to provide the video service requested in the application;
- (2) a grant of authority to use and occupy public rights-of-way in the delivery of the video service, subject to:
  - (A) state and local laws and regulations governing the use and occupancy of public rights-of-way; and
  - (B) the police powers of local units to enforce local ordinances and regulations governing the use and occupancy of public rights-of-way; and
- (3) a statement that the authority granted under subdivisions (1) and (2) is subject to the holder's lawful provision and operation of the video service.

(b) Except as provided in subsection (c) and section 28 of this chapter, the commission may not require a provider to:

- (1) satisfy any build-out requirements;
- (2) deploy, or make investments in, any infrastructure, facilities, or equipment; or
- (3) pay an application fee, a document fee, a state franchise fee, a service charge, or any fee other than the franchise fee paid to a local unit under section 24 of this chapter;

as a condition of receiving or holding a certificate under this chapter.

(c) This section does not limit the commission's right to enforce any obligation described in subsection (b) that a provider is subject to under the terms of a settlement agreement approved by the

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commission before July 29, 2004.

(d) The general assembly, a state agency, or a unit may not adopt a law, rule, ordinance, or regulation governing the use and occupancy of public rights-of-way that:

- (1) discriminates against any provider, or is unduly burdensome with respect to any provider, based on the particular facilities or technology used by the provider to deliver video service; or
- (2) allows a video service system owned or operated by a unit to use or occupy public rights-of-way on terms or conditions more favorable or less burdensome than those that apply to other providers.

A law, a rule, an ordinance, or a regulation that violates this subsection is void.

Sec. 18. Subject to the notice requirements under section 20 of this chapter, a certificate issued under this chapter may be transferred to any successor in interest of the holder to which the certificate is originally granted.

Sec. 19. A certificate issued under this chapter may be terminated by the holder by submitting notice to the commission under section 20 of this chapter.

Sec. 20. (a) In connection with, or as a condition of receiving, a certificate under this chapter, the commission shall require a holder to notify the commission, after the issuance of a certificate, of any of the following changes involving the holder or the certificate issued:

- (1) Any transaction involving a change in the ownership, operation, control, or corporate organization of the holder, including a merger, an acquisition, or a reorganization.
- (2) A change in the holder's legal name or the adoption of, or change to, an assumed business name. The holder shall submit to the commission a certified copy of the:
  - (A) amended certificate of authority; or
  - (B) certificate of assumed business name;
 issued by the secretary of state to reflect the change.
- (3) A change in the holder's principal business address or in the name of the person authorized to receive notice on behalf of the holder.
- (4) Any transfer of the certificate to a successor in interest of the holder allowed by section 18 of this chapter. The holder shall identify the successor in interest to which the transfer is made.

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(5) The termination of any certificate issued under this chapter, as allowed by section 19 of this chapter. The holder shall identify:

(A) any other certificate issued under this chapter that will be retained by the holder;

(B) the number of Indiana customers in the service area covered by the certificate being terminated; and

(C) the method by which the holder's customers were notified of the termination, if required by the commission under subsection (c).

(6) A change in the video programming or other programming service provided in one (1) or more of the services areas identified under section 16(b)(6) of this chapter in the holder's most recent application for a certificate under this chapter.

(7) A change in one (1) or more of the service areas identified under section 16(b)(6) of this chapter that would increase or decrease the territory within the service area. The holder shall describe the new boundaries of the affected service areas after the proposed change is made.

The commission shall prescribe the time in which a holder must report changes under this section. The commission may prescribe a form for the reporting of changes under this section.

(b) In connection with, or as a condition of, receiving a certificate under this chapter, the commission shall require a holder to notify a unit:

(1) in which the holder does not already provide video service under:

(A) a local franchise issued by the unit before July 1, 2006; or

(B) another certificate issued under this chapter after June 30, 2006; and

(2) that is included in the holder's service area under the certificate being issued;

that the holder intends to provide video service in the unit's jurisdiction. The holder shall give the notice required under this subdivision not later than ten (10) days before the holder begins providing video service in the unit's jurisdiction.

(c) In connection with the issuance of a certificate under this chapter, the commission may require a holder to provide advance notice to the holder's Indiana customers if the holder will do any of the following:

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(1) Change the rates and charges for video service that the holder offers in any of its service areas in Indiana.

(2) Cease to offer video service, or any specific video programming or other programming service, that the holder offers in any of the holder's service areas in Indiana.

The commission shall prescribe any customer notification requirements under this subsection in a rule of general application adopted under IC 4-22-2.

**Sec. 21. (a)** For purposes of this section, a provider is considered to be a holder of a local franchise on June 30, 2006, if:

(1) the provider; or

(2) any affiliate or successor entity of the provider;

holds a local franchise to provide video service in a unit on June 30, 2006.

(b) After June 30, 2006, a provider that is the holder of a local franchise on June 30, 2006, regardless of whether the provider is the incumbent provider in the local franchise service area, may elect to:

(1) continue providing video service under the local franchise until the local franchise expires; or

(2) subject to section 22 of this chapter, terminate the local franchise and apply to the commission for a certificate under this chapter.

(c) A provider that elects to terminate a local franchise under subsection (b) must provide written notice of the provider's election to:

(1) the commission; and

(2) the affected unit;

not later than November 1, 2006. The local franchise is terminated on the date the commission issues a certificate to the provider under this chapter.

(d) Not later than ninety (90) days after a local franchise is terminated under subsection (c), the provider that terminated the local franchise shall remit to the affected unit any accrued but unpaid franchise fees due under the local franchise. If the provider has credit remaining from any prepaid franchise fees, the provider may deduct the amount of the credit from any future fees or taxes owed to the affected unit.

**Sec. 22. (a)** A provider that elects to terminate a local franchise under section 21 of this chapter remains subject to the contractual rights, duties, and obligations incurred by the provider under the terms and conditions of the terminated local franchise that are

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owed to any private person, including a subscriber.

(b) The obligations that a provider owes to a private person under subsection (a) include any obligations based on the gross income received by the provider:

- (1) after the provider becomes a holder of a certificate under this chapter; and
- (2) for video service provided in the service area covered by the terminated local franchise;

if, under the terms of the terminated local franchise, the obligations would have been based on the gross income received by the provider for video service provided in the service area covered by the terminated local franchise.

(c) All liens, security interests, royalties, and other contracts, rights, and interests arising out of the terminated local franchise and owed to a private person, shall:

- (1) continue in full force and effect without the need for renewal, extension, or continuance;
- (2) be paid or performed by the provider after becoming a holder of a certificate under this chapter; and
- (3) apply as though the gross revenue of the provider continued to be generated under the terminated local franchise with respect to any revenue generated in the service area covered by the terminated local franchise.

(d) The commission shall condition the issuance or renewal of a certificate under this chapter on a provider's payment and performance of the rights, duties, and obligations described in this section until the time the terminated local franchise would ordinarily terminate or expire if the provider had not made the election under section 21 of this chapter. In applying for an initial certificate or a renewal certificate under this chapter, a provider shall agree to pay or perform the obligations described in this section, as required by section 16(b)(1)(D) of this chapter.

(e) A private person that claims to be:

- (1) owed any rights, duties, or obligations by a holder under this section; and
  - (2) aggrieved by a holder's alleged violation of this section;
- may bring an action in a court with jurisdiction to enforce the rights, duties, or obligations claimed to be owed to the person.

(f) As used in this section, "private person" does not include:

- (1) the unit that issued the terminated local franchise;
- (2) a political subdivision (as defined in IC 36-1-2-13) not described in subdivision (1); or

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(3) any official, agent, or employee of:

(A) the unit that issued the terminated local franchise; or

(B) a political subdivision described in subdivision (2);

in the individual's official capacity.

**Sec. 23. (a)** Except as provided in subsection (b), the holder of a certificate under this chapter shall, at the end of each calendar quarter, determine under subsections (c) and (d) the gross revenue received during that quarter from the holder's provision of video service in each unit included in the holder's service area under the certificate.

(b) This subsection applies to a holder or other provider providing video service in a unit in which a provider of video service is required on June 30, 2006, to pay a franchise fee based on a percentage of gross revenues. The holder's or provider's gross revenue shall be determined as follows:

(1) If only one (1) local franchise is in effect on June 30, 2006, the holder or provider shall determine gross revenue as the term is defined in the local franchise in effect on June 30, 2006.

(2) If:

(A) more than one (1) local franchise is in effect on June 30, 2006; and

(B) the holder or provider is subject to a local franchise in the unit on June 30, 2006;

the holder or provider shall determine gross revenue as the term is defined in the local franchise to which the holder or provider is subject on June 30, 2006.

(3) If:

(A) more than one (1) local franchise is in effect on June 30, 2006; and

(B) the holder is not subject to a local franchise in the unit on June 30, 2006;

the holder shall determine gross revenue as the term is defined in the local franchise in effect on June 30, 2006, that is most favorable to the unit.

(c) This subsection does not apply to a holder that is required to determine gross revenue under subsection (b). The holder shall include the following in determining the gross revenue received during the quarter with respect to a particular unit:

(1) Fees and charges charged to subscribers for video service provided by the holder. Fees and charges under this subdivision include the following:

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- (A) Recurring monthly charges for video service.
  - (B) Event based charges for video service, including pay per view and video on demand charges.
  - (C) Charges for the rental of set top boxes and other equipment.
  - (D) Service charges related to the provision of video service, including activation, installation, repair, and maintenance charges.
  - (E) Administrative charges related to the provision of video service, including service order and service termination charges.
- (2) Revenue received by an affiliate of the holder from the affiliate's provision of video service, to the extent that treating the revenue as revenue of the affiliate, instead of revenue of the holder, would have the effect of evading the payment of fees that would otherwise be paid to the unit. However, revenue of an affiliate may not be considered revenue of the holder if the revenue is otherwise subject to fees to be paid to the unit.
- (d) This subsection does not apply to a holder that is required to determine gross revenue under subsection (b). The holder shall not include the following in determining the gross revenue received during the quarter with respect to a particular unit:
- (1) Revenue not actually received, regardless of whether it is billed. Revenue described in this subdivision includes bad debt.
  - (2) Revenue received by an affiliate or any other person in exchange for supplying goods and services used by the holder to provide video service under the holder's certificate.
  - (3) Refunds, rebates, or discounts made to subscribers, advertisers, the unit, or other providers leasing access to the holder's facilities.
  - (4) Revenue from providing service other than video service, including revenue from providing:
    - (A) telecommunications service (as defined in 47 U.S.C. 153(46));
    - (B) information service (as defined in 47 U.S.C. 153(20)), other than video service; or
    - (C) any other service not classified as cable service or video programming by the Federal Communications Commission.
  - (5) Any fee imposed on the holder under this chapter that is

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passed through to and paid by subscribers, including the franchise fee:

(A) imposed under section 24 of this chapter for the quarter immediately preceding the quarter for which gross revenue is being computed; and

(B) passed through to and paid by subscribers during the quarter for which gross revenue is being computed.

(6) Revenue from the sale of video service for resale in which the purchaser collects a franchise fee under:

(A) this chapter; or

(B) a local franchise agreement in effect on July 1, 2006; from the purchaser's customers. This subdivision does not limit the authority of a unit, or the commission on behalf of a unit, to impose a tax, fee, or other assessment upon the purchaser under 42 U.S.C. 542(h).

(7) Any tax of general applicability:

(A) imposed on the holder or on subscribers by a federal, state, or local governmental entity; and

(B) required to be collected by the holder and remitted to the taxing entity;

including the state gross retail and use taxes (IC 6-2.5) and the utility receipts tax (IC 6-2.3).

(8) Any forgone revenue from providing free or reduced cost cable video service to any person, including:

(A) employees of the holder;

(B) the unit; or

(C) public institutions, public schools, or other governmental entities, as required or permitted by this chapter or by federal law.

However, any revenue that the holder chooses to forgo in exchange for goods or services through a trade or barter arrangement shall be included in gross revenue.

(9) Revenue from the sale of:

(A) capital assets; or

(B) surplus equipment that is not used by the purchaser to receive video service from the holder.

(10) Reimbursements that:

(A) are made by programmers to the holder for marketing costs incurred by the holder for the introduction of new programming; and

(B) exceed the actual costs incurred by the holder.

(11) Late payment fees collected from customers.

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(12) Charges, other than those described in subsection (b)(1), that are aggregated or bundled with charges described in subsection (b)(1) on a customer's bill, if the holder can reasonably identify the charges on the books and records by the holder in the regular course of business.

(e) If, under the terms of the holder's certificate, the holder provides video service to any unincorporated area in Indiana, the holder shall calculate the holder's gross income received from each unincorporated area served in accordance with:

- (1) subsection (b); or
- (2) subsections (c) and (d);

whichever is applicable.

(f) If a unit served by the holder under a certificate annexes any territory after the certificate is issued or renewed under this chapter, the holder shall:

- (1) include in the calculation of gross revenue for the annexing unit any revenue generated by the holder from providing video service to the annexed territory; and
- (2) subtract from the calculation of gross revenue for any unit or unincorporated area:

- (A) of which the annexed territory was formerly a part; and

- (B) served by the holder before the effective date of the annexation;

the amount of gross revenue determined under subdivision (1);

beginning with the calculation of gross revenue for the calendar quarter in which the annexation becomes effective. The holder shall notify the commission of the new boundaries of the affected service areas as required under section 20(a)(7) of this chapter.

Sec. 24. (a) Subject to subsection (e), not later than forty-five (45) days after the end of each calendar quarter, the holder shall pay to each unit included in the holder's service area under a certificate issued under this chapter a franchise fee equal to:

- (1) the amount of gross revenue received from providing video service in the unit during the most recent calendar quarter, as determined under section 23 of this chapter; multiplied by

- (2) a percentage equal to one (1) of the following:

- (A) If a local franchise has never been in effect in the unit before July 1, 2006, five percent (5%).

- (B) If no local franchise is in effect in the unit on July 1,

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2006, but one (1) or more local franchises have been in effect in the unit before July 1, 2006, the percentage of gross revenue paid by the holder of the most recent local franchise in effect in the unit, unless the unit elects to impose a different percentage, which may not exceed five percent (5%).

(C) If there is one (1) local franchise in effect in the unit on July 1, 2006, the percentage of gross revenue paid by the holder of that local franchise as a franchise fee to the unit, unless the unit elects to impose a different percentage, which may not exceed five percent (5%). Upon the expiration of a local franchise described in this clause, the percentage shall be determined by the unit but may not exceed five percent (5%).

(D) If there is more than one (1) local franchise in effect with respect to the unit on July 1, 2006, a percentage determined by the unit, which may not exceed the greater of:

- (i) five percent (5%); or
- (ii) the percentage paid by a holder of any local franchise in effect in the unit on July 1, 2006.

(b) If the holder provides video service to an unincorporated area in Indiana, as described in section 23(e) of this chapter, the holder shall:

- (1) calculate the franchise fee with respect to the unincorporated area in accordance with subsection (a); and
- (2) remit the franchise fee to the county in which the unincorporated area is located.

If an unincorporated area served by the provider is located in one (1) or more contiguous counties, the provider shall remit part of the franchise fee calculated under subdivision (1) to each county having territory in the unincorporated area served. The part of the franchise fee remitted to a county must bear the same proportion to the total franchise fee for the area, as calculated under subdivision (1), that the number of subscribers in the county bears to the total number of subscribers in the unincorporated area served.

(c) With each payment of a franchise fee to a unit under this section, the holder shall include a statement explaining the basis for the calculation of the franchise fee. A unit may review the books and records of:

- (1) the holder; or

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(2) an affiliate of the holder, if appropriate;  
to the extent necessary to ensure the holder's compliance with section 23 of this chapter in calculating the gross revenue upon which the remitted franchise fee is based. Each party shall bear the party's own costs of an examination under this subsection. If the holder and the unit cannot agree on the amount of gross revenue on which the franchise fee should be based, either party may petition the commission to determine the amount of gross revenue on which the franchise fee should be based. A determination of the commission under this subsection is final, subject to the right of direct appeal by either party.

(d) A franchise fee owed by a holder to a unit under this section may be passed through to, and collected from, the holder's subscribers in the unit. To the extent allowed under 43 U.S.C. 542(c), the holder may identify as a separate line item on each regular bill issued to a subscriber:

- (1) the amount of the total bill assessed as a franchise fee under this section; and
- (2) the identity of the unit to which the franchise fee is paid.

(e) A holder that elects under section 21(b)(1) of this chapter to continue providing video service under a local franchise is not required to pay the franchise fee prescribed under this section, but shall pay any franchise fee imposed under the terms of the local franchise.

**Sec. 25. (a) This section applies in a unit that:**

- (1) is included in the service area of a holder of a certificate issued under this chapter; and
- (2) requires a provider described in section 21(a) of this chapter to provide PEG channel capacity, facilities, or financial support under a local franchise issued to the provider by the unit before July 1, 2006, regardless of whether the provider elects to:

- (A) continue the local franchise under section 21(b)(1) of this chapter; or
- (B) terminate the local franchise under section 21(b)(2) of this chapter and continue providing video service in the unit under a certificate issued under this chapter.

(b) As used in this section, "PEG channel" refers to a channel made available by a provider on the provider's video service system for public, educational, and governmental programming.

(c) The holder of a certificate under this chapter shall provide in the unit at least the number of PEG channels that the provider

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described in section 21(a) of this chapter is required to provide in the unit under the terms of the local franchise described in subsection (a)(2).

(d) If the local franchise described in subsection (a)(2) requires the provider described in section 21(a) of this chapter to provide financial support for public, educational, or governmental programming in the unit, the holder of a certificate under this chapter shall pay the unit the same cash payments on a per subscriber basis that the provider described in section 21(a) of this chapter is required to pay the unit under the terms of the local franchise. The holder shall remit payments under this subsection to the unit on a quarterly basis, along with the franchise fee paid to the unit under section 24 of this chapter. For each calendar quarter, the holder shall remit to the unit an amount equal to:

- (1) the cash payment for the quarter due from the provider described in section 21(a) of this chapter; multiplied by
- (2) a fraction, the numerator of which equals the number of subscribers served by the holder in the unit, and the denominator of which equals the total number of subscribers served by all providers in the unit.

(e) Any payments remitted to a unit under subsection (d):

- (1) are made:
  - (A) for the purposes set forth in 47 U.S.C. 531; and
  - (B) under the unit's authority under 47 U.S.C. 541(a)(4)(B); and
- (2) may not be credited against the franchise fee payable to the unit under section 24 of this chapter.

Sec. 26. (a) This section applies in a unit or an unincorporated area of Indiana that:

- (1) is included in the service area of a holder of a certificate issued under this chapter; and
- (2) does not require a provider described in section 21(a) of this chapter to provide PEG channel capacity, facilities, or financial support under a local franchise issued before July 1, 2006.

(b) As used in this section, "PEG channel" has the meaning set forth in section 25(b) of this chapter.

(c) As a condition of issuing or renewing a certificate to a holder under this chapter, and upon:

- (1) the petition of a unit or an unincorporated area included in the holder's service area under the certificate; or
- (2) the commission's own motion;

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the commission may require the holder to provide PEG channel capacity, facilities, or financial support to one (1) or more units or unincorporated areas in the holder's service area under the certificate.

(d) As allowed by 47 U.S.C. 531, the commission may do the following in exercising its authority under this section:

(1) Adopt rules and procedures for the designation or use of PEG channel capacity in each unit or unincorporated area in which the requirements apply.

(2) Enforce any requirement concerning the provision or use of PEG channel capacity. The commission's enforcement authority under this subdivision includes the authority to enforce any provision that:

(A) is proposed by the holder and incorporated in the holder's certificate; and

(B) concerns services, facilities, or equipment related to PEG channel capacity;

regardless of whether the provision is required in rules or procedures adopted by the commission under subdivision (1).

(3) If PEG channel capacity is designated under the certificate, prescribe rules and procedures:

(A) under which the holder is permitted to use the designated channel capacity to provide other services, if the channel capacity is not being used in the unit or unincorporated area for the designated purposes; and

(B) that set forth the conditions under which the holder must cease any use permitted under clause (A).

**Sec. 26.5. (a) This section applies in a unit:**

(1) that is included in the service area of a holder of a certificate issued under this chapter; and

(2) in which a provider is required to provide PEG channel capacity:

(A) under a local franchise issued to the provider by the unit before July 1, 2006; or

(B) by the commission under section 26 of this chapter.

(b) As used in this section, "PEG channel" has the meaning set forth in section 25(b) of this chapter.

(c) As a condition of issuing or renewing a certificate to a holder under this chapter, and upon:

(1) the petition of the unit; or

(2) the commission's own motion;

the commission may require the holder to provide the unit with

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PEG channel capacity that is in addition to the channel capacity required to be provided in the unit under the existing local franchise or under an order of the commission under section 26 of this chapter.

**Sec. 27. (a)** The operation of a PEG channel provided under section 25, 26, or 26.5 of this chapter is the responsibility of the unit or unincorporated area that receives the benefit of the channel, and the holder or other provider is responsible only for the transmission of the channel.

**(b)** A unit or an unincorporated area that receives the benefit of a PEG channel provided under section 25, 26, or 26.5 of this chapter shall ensure that all transmissions, content, and programming that are transmitted over a channel or other facility of the provider are submitted to the provider in a manner or form that:

- (1) is capable of being accepted and transmitted by the provider over the provider's video service system;
- (2) does not require additional alteration or change in the content by the provider; and
- (3) is compatible with the technology or protocol used by the provider to deliver video service.

**(c)** If it is technically feasible to do so, the holder of a certificate under this section and a provider described in section 21(a) of this chapter may cooperate to interconnect their systems to provide PEG channel capacity required under section 25, 26, or 26.5 of this chapter. Interconnection under this section may be accomplished by direct cable, microwave link, satellite, or other reasonable method of connection. The parties shall negotiate the terms of the interconnection in good faith, and a provider described in section 21(a) of this chapter may not withhold interconnection of PEG channel capacity.

**(d)** A court with jurisdiction has exclusive authority to enforce any requirement under:

- (1) this section; or
- (2) section 25, 26, or 26.5 of this chapter.

**Sec. 28. (a)** This section applies to the following:

- (1) A provider that holds a certificate issued by the commission under this chapter.
- (2) A provider that provides video service under a local franchise, as permitted under section 21(b)(1) of this chapter.

**(b)** Subject to section 17(b) of this chapter, a provider may not deny access to video service to any group of potential residential

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subscribers based on the income level of the residents in the local area in which the group resides. However, a provider:

- (1) shall have a reasonable time to become capable of providing video service to all households within a service area included in the provider's franchise; and
- (2) may satisfy the requirements of this subsection through the use of an alternative technology that:
  - (A) offers content, service, and functionality comparable to that provided through the provider's video service system, as determined by the commission; and
  - (B) may include a technology that does not require the use of any public right-of-way.

(c) For purposes of this subsection, an "affected person" includes the following:

- (1) A potential subscriber of video service from a provider.
- (2) A local unit in which a person described in subdivision (1) resides, acting on behalf of the person or other similarly situated persons.

An affected person that alleges a violation of subsection (b) by a provider may petition the commission for equitable relief. Not later than forty-five (45) days after receiving a petition under this subsection, the commission shall, after notice and an opportunity for hearing, make a determination as to whether a violation of subsection (b) has occurred.

(d) If, after holding any hearing requested in the matter, the commission determines that no violation of subsection (b) has occurred, the commission's decision is final, subject to the petitioner's right to appeal the decision in a court having jurisdiction. If the commission determines that a violation of subsection (b) has occurred, the commission may issue an order requiring the provider to offer video service to those persons to whom access to the provider's video service has been denied. An order of the commission under this subsection must specify the following:

- (1) A date by which the provider must offer video service to those persons to whom access has been denied as a result of the provider's violation. In specifying a date under this subdivision, the commission shall allow the provider a reasonable time to become capable of providing the required video service to the affected households.
- (2) Any alternative technology described in subsection (b)(2) that the commission approves for use by the provider in

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making video service available to the affected households.  
 Except as provided in subsection (e), an order of the commission under this subsection is final.

(e) A provider may appeal:

- (1) a determination by the commission under subsection (d) that a violation of subsection (b) has occurred; or
- (2) any findings or requirements of the order issued in connection with the commission's finding of a violation;

in a court having jurisdiction.

**Sec. 29. (a)** This section applies to a provider that holds a local franchise to provide video service in a unit at any time before July 1, 2009, regardless of whether:

(1) the provider elects:

- (A) under section 21(b)(1) of this chapter, to continue providing video service under the local franchise; or
- (B) under section 21(b)(2) of this chapter, to terminate the local franchise and provide video service in the unit under a certificate issued under this chapter;

if the local franchise is in effect on June 30, 2009; or

(2) the provider will provide video service in the unit under a certificate issued under this chapter, if the local franchise expires before July 1, 2009.

(b) As used in this section, "local franchise" refers to:

- (1) the existing local franchise, if subsection (a)(1)(A) applies;
- (2) the terminated local franchise, if subsection (a)(1)(B) applies; or
- (3) the most recent local franchise held by the provider in the unit, if subsection (a)(2) applies.

(c) A holder to which this section applies shall continue to provide the following services under the terms of the local franchise until January 1, 2009, or until the local franchise will expire or would have expired, whichever is later:

- (1) Institutional network capacity, however defined or referenced in the local franchise, but generally including private line data network capacity for use by the unit for noncommercial purposes. Institutional network capacity provided under this subdivision shall continue to be provided at the same capacity as required under the terms of the local franchise.
- (2) Video service to community public buildings, such as municipal buildings and public schools, however defined or referenced in the local franchise, but generally including cable

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drop connections to the buildings and a particular tier of video service provided to the buildings. Video service provided under this subdivision shall continue to be provided to the same extent as required under the terms of the local franchise.

Beginning January 1, 2009, or upon the date on which the local franchise will expire or would have expired, whichever is later, a provider that provides services under this subsection shall continue to provide the services under this subsection if the unit requests that the services continue after December 31, 2008, or after the date the local franchise will expire or would have expired, whichever is later.

(d) This subsection applies to services described in subsection (c) that are provided after December 31, 2008, or after the date the local franchise will expire or would have expired, whichever is later. The incremental costs of the services shall be apportioned among all holders of a franchise to provide video service within the unit. The amount of the incremental costs borne by a particular holder is equal to the total cost of providing the services multiplied by a fraction calculated as follows:

- (1) The numerator of the fraction equals the number of subscribers to whom the holder provides video service in the unit.
- (2) The denominator of the fraction equals the total number of subscribers to whom all holders provide video service in the unit.

SECTION 59. IC 8-1-36 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

**Chapter 36. Indiana Lifeline Assistance Program**

**Sec. 1.** This chapter applies to an eligible telecommunications carrier that offers basic telecommunications service in one (1) or more exchange areas in Indiana.

**Sec. 2.** Except as otherwise provided in this chapter, the definitions in IC 8-1-2.6 apply throughout this chapter.

**Sec. 3.** As used in this chapter, "commission" refers to the Indiana utility regulatory commission created by IC 8-1-1-2.

**Sec. 4.** As used in this chapter, "eligible telecommunications carrier" refers to a local exchange carrier that is designated as an eligible telecommunications carrier by the commission under 47 CFR 54.201.

**Sec. 5.** As used in this chapter, "federal Lifeline program"

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refers to the retail local service offering:

- (1) available only to qualifying low-income consumers (as defined in 47 CFR 54.400(a));
- (2) for which qualifying low-income consumers pay reduced charges as a result of the application of the Lifeline support amount described in 47 CFR 54.403; and
- (3) that includes the services and functionalities set forth in 47 CFR 54.101(a)(1) through 47 CFR 54.101(a)(9);

as described in 47 CFR 54.401.

Sec. 6. As used in this chapter, "participant" refers to an eligible customer who applies for and receives assistance through the program.

Sec. 7. As used in this chapter, "program" refers to the Indiana Lifeline assistance program established by the commission under section 8 of this chapter.

Sec. 8. (a) Not later than July 1, 2008, the commission shall adopt rules under IC 4-22-2 to establish the Indiana Lifeline assistance program. The program shall offer reduced charges for basic telecommunications service to eligible customers. The rules adopted by the commission under this section must do the following:

- (1) Require an eligible telecommunications carrier to offer toll limitation (as defined in 47 CFR 54.400(d)) to an eligible customer who applies for assistance under the program. The rules must specify that an eligible telecommunications carrier may not charge a participant an administrative charge or any other additional amount for toll limitation.
- (2) Allow an eligible telecommunications carrier to block a participant's access to interexchange service, except for access to toll free numbers, if the participant owes an outstanding amount for basic telecommunications service. The rules must require an eligible telecommunications carrier to remove the block without additional cost to the participant upon payment of the outstanding amount.
- (3) Prohibit an eligible telecommunications carrier from discontinuing basic telecommunications service to a participant because of nonpayment by the participant of charges for other services billed by the eligible telecommunications carrier, including interexchange service.

(b) Funding for the following costs of the program shall be determined by the commission, after notice and hearing, in a manner based on and consistent with comparable federal funding

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**mechanisms for the federal Lifeline program:**

**(1) The costs of reimbursing eligible telecommunications carriers for lost revenues associated with providing reduced charges for basic telecommunications service to participants.**

**(2) Reasonable expenses incurred by the commission and eligible telecommunications carriers to:**

**(A) administer the program; and**

**(B) publicize the availability of the program in a manner reasonably designed to reach eligible customers.**

**(c) The rules adopted by the commission under IC 4-22-2 to establish the program must:**

**(1) take effect not later than July 1, 2009; and**

**(2) be consistent with this chapter.**

**Upon the effective date of the rules adopted by the commission under this section, an eligible telecommunications carrier shall offer basic telecommunications service to an eligible customer at the reduced rates established under the rules.**

**Sec. 9. A customer is eligible to receive reduced rates for basic telecommunications service under the program if:**

**(1) the customer's income (as defined in 47 CFR 54.400(f)) does not exceed one hundred fifty percent (150%) of the federal poverty guidelines; or**

**(2) any person in the customer's household receives or has a child who receives any of the following:**

**(A) Medicaid.**

**(B) Food stamps.**

**(C) Supplemental Security Income.**

**(D) Federal public housing assistance.**

**(E) Home energy assistance under a program administered by the division of family resources under IC 12-14-11.**

**(F) Assistance under the federal Temporary Assistance to Needy Families (TANF) program (45 CFR 260 et seq.).**

**(G) Free lunches under the national school lunch program.**

**Sec. 10. An eligible telecommunications carrier may seek Tier Three federal Lifeline support under 47 CFR 54.403(a)(3) in connection with support provided by the eligible telecommunications carrier under this chapter.**

**SECTION 60. IC 35-45-5-4.7, AS ADDED BY P.L.70-2005, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 4.7. (a) An interactive computer service that handles or retransmits a commercial electronic mail message has a right of action against a person who initiates or assists the transmission**

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of the commercial electronic mail message that violates this chapter.

(b) This chapter does not provide a right of action against:

- (1) an interactive computer service;
- (2) a telephone company; ~~(as defined in IC 8-1-2-88);~~
- (3) a CMRS provider (as defined in IC 36-8-16.5-6);
- (4) a cable operator (as defined in 47 U.S.C. 522(5)); or
- (5) any other entity that primarily provides connectivity to an operator;

if the entity's equipment is used only to transport, handle, or retransmit information that violates this chapter and is not capable of blocking the retransmission of information that violates this chapter.

(c) It is a defense to an action under this section if the defendant shows by a preponderance of the evidence that the violation of this chapter resulted from a good faith error and occurred notwithstanding the maintenance of procedures reasonably adopted to avoid violating this chapter.

(d) If the plaintiff prevails in an action filed under this section, the plaintiff is entitled to the following:

- (1) An injunction to enjoin future violations of this chapter.
- (2) Compensatory damages equal to any actual damage proven by the plaintiff to have resulted from the initiation of the commercial electronic mail message. If the plaintiff does not prove actual damage, the plaintiff is entitled to presumptive damages of five hundred dollars (\$500) for each commercial electronic mail message that violates this chapter and that is sent by the defendant:
  - (A) to the plaintiff; or
  - (B) through the plaintiff's interactive computer service.
- (3) The plaintiff's reasonable attorney's fees and other litigation costs reasonably incurred in connection with the action.

(e) A person outside Indiana who:

- (1) initiates or assists the transmission of a commercial electronic mail message that violates this chapter; and
- (2) knows or should know that the commercial electronic mail message will be received in Indiana;

submits to the jurisdiction of Indiana courts for purposes of this chapter.

SECTION 61. THE FOLLOWING ARE REPEALED [EFFECTIVE UPON PASSAGE]: IC 8-1-2.6-3; IC 8-1-2.6-5; IC 8-1-2.6-7; IC 8-1-33-14.

SECTION 62. THE FOLLOWING ARE REPEALED [EFFECTIVE JULY 1, 2009]: IC 8-1-2-88; IC 8-1-2-88.5; IC 8-1-2.6-6; IC 8-1-17-6;

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IC 8-1-17-21; IC 8-1-17-22; IC 8-1-17-22.5.

SECTION 63. [EFFECTIVE UPON PASSAGE] (a) As used in this SECTION, "basic telecommunications service" has the meaning set forth in IC 8-1-2.6-0.1, as added by this act.

(b) As used in this SECTION, "commission" refers to the Indiana utility regulatory commission created by IC 8-1-1-2.

(c) As used in this SECTION, "provider" has the meaning set forth in IC 8-1-2.6-0.4, as added by this act.

(d) Notwithstanding IC 8-1-2.6-1.4, as added by this act, the commission may, before July 1, 2009, take any action necessary to divest itself, by July 1, 2009, of any jurisdiction that:

- (1) is not described in IC 8-1-2.6-1.5(b), as added by this act, or IC 8-1-2.6-13(d), as added by this act; and
- (2) the commission exercises over basic telecommunications service before July 1, 2009.

(e) This SECTION expires January 1, 2010.

SECTION 64. [EFFECTIVE UPON PASSAGE] (a) The definitions in IC 8-1-34, as added by this act, apply throughout this SECTION.

(b) As used in this SECTION, "commission" refers to the Indiana utility regulatory commission created by IC 8-1-1-2.

(c) For the period beginning July 1, 2006, and ending June 30, 2010, the commission shall conduct an analysis of the deployment of video service in Indiana. In conducting the analysis required under this subsection, the commission shall determine and collect data on the following for each metropolitan statistical area in Indiana on at least an annual basis:

- (1) The median per capita income of the metropolitan statistical area in relation to the median per capita income of the state.
- (2) Whether the metropolitan statistical area is part of or includes an underserved area, as determined by the Indiana finance authority under IC 8-1-33-13, as amended by this act.
- (3) An identification of each provider offering video service in the metropolitan statistical area. For each provider identified under this subdivision, the commission shall identify whether the provider offers video service in the metropolitan statistical area under:
  - (A) a local franchise; or
  - (B) a certificate issued by the commission under IC 8-1-34-17, as added by this act.
- (4) For each provider identified under subdivision (3), the type of technology used to deliver the video service offered. In

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compiling the information required under this subdivision, the commission may prepare a map identifying the location of the infrastructure used to provide video service within the metropolitan statistical area.

(5) For each provider identified under subdivision (3), any infrastructure build out initiated or completed within the metropolitan statistical area during the particular data collection period. For a provider that offers video service in the metropolitan statistical area under a local franchise, the commission shall identify whether the build out identified under this subdivision is required under the local franchise. In compiling the information required under this subdivision, the commission may prepare a map identifying the location of any build out that is initiated or completed.

(6) For each provider identified under subdivision (3), the provider's compliance with IC 8-1-34-28, as added by this act. The commission shall include in the data collected under this subdivision information on any complaint filed by an affected person under IC 8-1-34-28(c), as added by this act, including the commission's resolution of the complaint under IC 8-1-34-28(d).

(d) In the commission's report under IC 8-1-2.6-4 that is due to the regulatory flexibility committee on July 1, 2010, the commission shall include the results of the commission's analysis under subsection (c). The results reported must include the data collected under subsection (c) for each metropolitan statistical area in Indiana for each annual data collection period monitored by the commission during the four year period specified under subsection (c).

SECTION 65. [EFFECTIVE JULY 1, 2006] (a) The definitions in IC 8-1-2.6 apply to this SECTION.

(b) As used in this SECTION, "committee" refers to the regulatory flexibility committee established by IC 8-1-2.6-4.

(c) For purposes of this SECTION, a rate charged by a telecommunications provider is considered predatory if, for purposes of reporting to taxing authorities, the rate charged for a particular service is not set at or above the service's long run incremental cost.

(d) For the period beginning July 1, 2006, and ending June 30, 2008, the committee shall conduct an analysis of the rates charged by the telecommunications industry in Indiana for any service provided at the wholesale or retail level.

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(e) The committee shall make a record of each instance of predatory pricing identified by the committee during the course of the analysis required under this SECTION.

(f) The committee shall report the findings of the analysis required under this SECTION to the legislative council before November 1, 2008. The report must include the committee's recommendations, if any, for regulatory or legislative intervention.

(g) The report and recommendations issued under this SECTION to the legislative council must be in an electronic format under IC 5-14-6.

(h) This SECTION expires January 1, 2009.

SECTION 66. An emergency is declared for this act.

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Speaker of the House of Representatives

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President of the Senate

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President Pro Tempore

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Governor of the State of Indiana

Date: \_\_\_\_\_ Time: \_\_\_\_\_

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